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Transcript Exhibit(s)

Docket #(s): RR-02635B-08-0169

Arizona Corporation Commission
DOCKETED

JUN 04 2008

DOCKETED BY	NR
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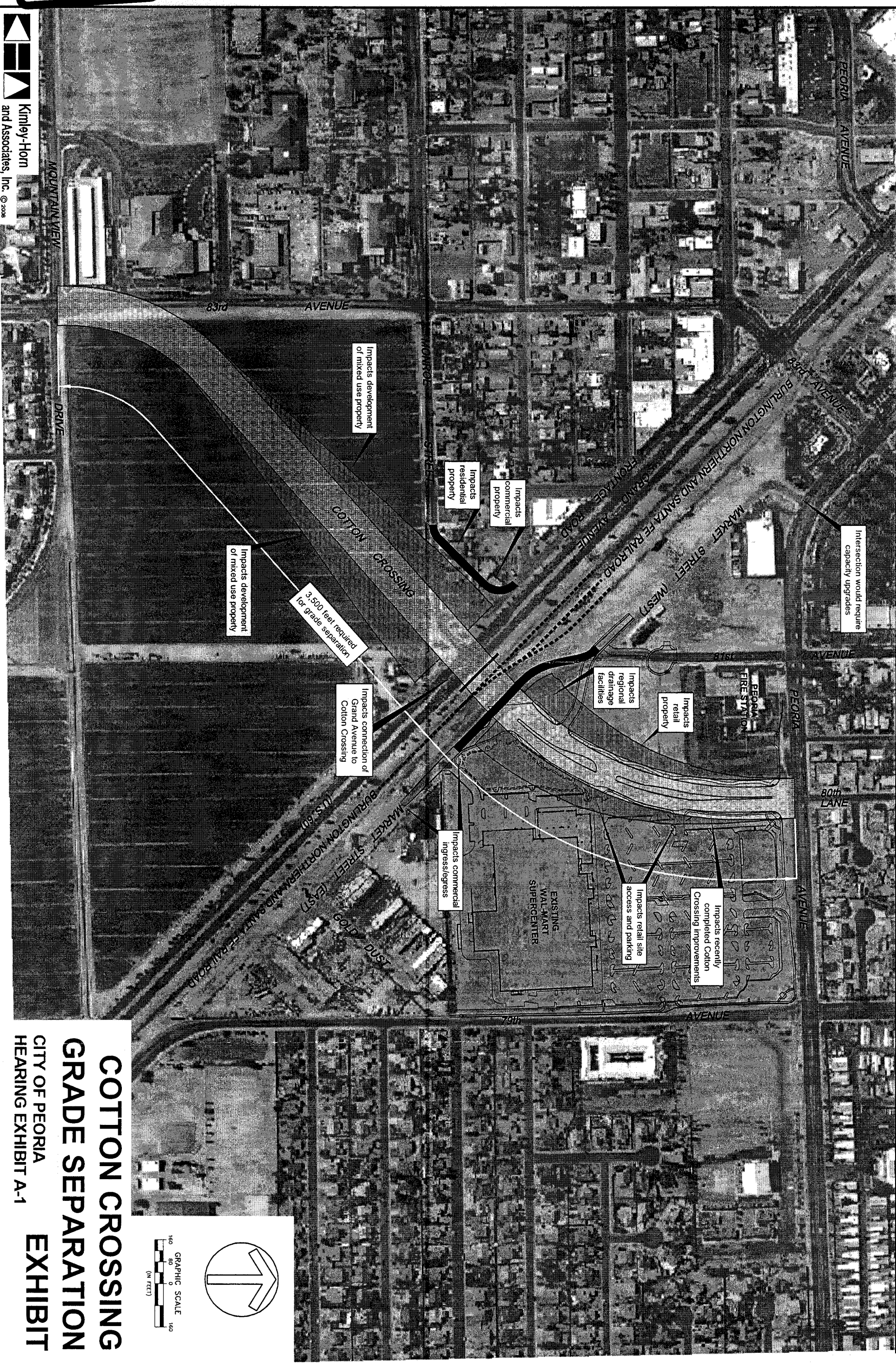
Exhibit # : A1-A4,31

AZ CORP COMMISSION
DOCKET CONTROL

2008 JUN -4 P 3:15

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Kimley-Horn
and Associates, Inc. © 2008



**COTTON CROSSING
GRADE SEPARATION
CITY OF PEORIA
HEARING EXHIBIT A-1
EXHIBIT**

1



2



EXHIBIT
A-2
ADMITTED
tabbles

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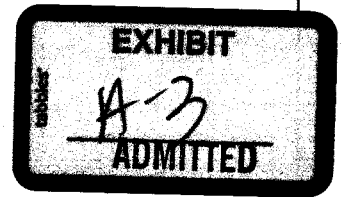
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8



CITY OF PEORIA
HEARING EXHIBIT A-3



1 Stephen M. Kemp, City Attorney (010026)
2 Stephen J. Burg, Senior Deputy City Attorney (012073)
3 **OFFICE OF THE CITY ATTORNEY**
4 **CITY OF PEORIA**
5 8401 W. Monroe Street, Room 280
6 Peoria, Arizona 85345
7 Telephone: (623) 773-7330
8 Facsimile: (623) 773-7043
9 Email: city.attorney@peoriaaz.gov
10 Attorneys for the City of Peoria

11 **BEFORE THE ARIZONA CORPORATION COMMISSION**

12 COMMISSIONERS

13 MIKE GLEASON, Chairman)
14 WILLIAM A. MUNDELL)
15 JEFF HATCH-MILLER)
16 KRISTIN K. MAYES)
17 GARY PEIRCE)

DOCKET NO. RR-02635B-08-0169

18 CERTIFICATION OF NOTICE

19 IN THE MATTER OF THE APPLICATION)
20 OF THE CITY OF PEORIA TO UPGRADE)
21 AN EXISTING CROSSING OF THE)
22 BURLINGTON NORTHERN AND SANTA)
23 FE RAILWAY AT 81ST AVENUE IN THE)
24 CITY OF PEORIA, MARICOPA COUNTY,))
25 ARIZONA AT AAR/DOT NO. 025-405-Y))
26

21 Pursuant to Procedural Order dated April 1, 2008, the City of Peoria, on April 7, 2008, via
22 Certified, Return-Receipt-Requested Mail, mailed copies of the (1) Procedural Order, (2) City of
23 Peoria's April 7, 2008 letter with Grade Crossing Upgrade map, (3) City of Peoria's March 18, 2008
24 Letter of Transmittal, (4) City of Peoria's March 18, 2008 letter to Mr. Chris Watson, of the Arizona
25 Corporation Commission, (5) Grade Crossing Signal Installation Agreement, (LCON 08307) dated
26 December 6, 2007, (6) Memorandum of Easement, (LCON 08307B) dated February 29, 2008,

1 (7) Easement Agreement (LCON 08307A), dated February 29, 2008, (8) Contractor Requirements,
2 and (9) Agreement between BNSF Railway Company and the Contractor, which are attached hereto
3 as EXHIBIT "A", to the interested parties, listed below.

4 Melvin Thomas
5 Burlington Northern Santa Fe RR
6 740 E. Carnegie Dr.
7 San Bernardino, CA 92408

8 Dani Ziem, Sr. Design Manager
9 Wal-Mart Stores, Inc. (Store #1533-03)
10 2001 S. E. 10th Street
11 Bentonville, AR 72716-0550

12 Joshua Rogers, Property Mgr - AZ
13 Wal-Mart Stores, Inc. (Store #1533-03)
14 2001 S. E. 10th Street
15 Bentonville, AR 72716-0550

16 Barry Young, Construction Manager
17 Wal-Mart Stores, Inc. (Store #1533-03)
18 2001 S. E. 10th Street
19 Bentonville, AR 72716-0550

20 Claudia Gantert
21 Southwest Gas
22 9 S. 43rd Ave. MS 420-586
23 Phoenix, AZ 85009

24 Ron Pint
25 Cox Communications
26 1550 W. Deer Valley Road
Phoenix, AZ 85027

Mr. Hector Buenrostro
Salt River Project
221 North 79th Avenue
Tolleson, AZ 85043

Jay R. Schneider
Wal-Mart Stores, Inc. (Store #1533-03)
2001 S. E. 10th Street
Bentonville, AR 72716-0550

1 Mr. Tony Belford
2 Southwest Fibernet
3 2920 Directors Row
4 Salt Lake City, UT 84104

5 Robert Travis
6 Arizona Dept. of Transportation
7 205 S. 17th Ave., MD 618E
8 Phoenix, AZ 85007

9 Matt Robbins
10 Scott Communities
11 2151 E. Broadway Road, # 210
12 Tempe, AZ 85282

13 Mr. Bobby Garza
14 Arizona Public Service
15 P.O. Box 53999, MS 3876
16 Phoenix, AZ 85072

17 John Settembre
18 Qwest Communications
19 135 W. Orion Street
20 Tempe, AZ 85283

21 Robert Russell, OSP Engineer
22 Integra Telecom
23 3540 East Baseline Road, # 100
24 Phoenix, AZ 85042

25 As evidence by the original Certified Return-Receipt documents (EXHIBIT "B"), the above
26 mentioned individuals received proper notice of receipt of the documents as required by the Arizona
Corporation Commission's Procedural Order.

On April 18, 2008, the City of Peoria published in the Peoria Times the
Public Notice of the Hearing in the matter of the application of the City of Peoria
to upgrade an existing crossing of the Burlington Northern and Santa Fe Railway
at 81st Avenue, in the City of Peoria, Maricopa County, Arizona, at AAR/DOT
No. 025-405-Y, Docket No. RR-02635B-08-0169.
(EXHIBIT "C") as required by the Arizona Corporation Commission's Procedural Order.

DATED this 30th day of April, 2008.

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**OFFICE OF THE CITY ATTORNEY
CITY OF PEORIA**

By: Stephen J. Burg
Stephen J. Burg, Chief Assistant City Attorney
8401 West Monroe Street
Suite # 280
Peoria, Arizona 85345
Attorney for City of Peoria

ORIGINAL AND 13 COPIES delivered
This 30th day of April, 2008, to:

Arizona Corporation Commission
Commission Docket Control
1200 West Washington Street
Room 108
Phoenix, AZ 85003

COPY of the foregoing mailed/delivered this
30th day of April, 2008, to:

Marc E. Stern
Administrative Law Judge
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85003

Melvin V. Thomas, Manager
Public Projects
BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY
740 E. Carnegie Drive
San Bernardino, California 92408

Bruce Vana, P.E., Engineer Manager
Utility & Railroad Engineering Section
ARIZONA DEPARTMENT OF TRANSPORTATION
205 South 17th Avenue, Mail Drop 618E
Phoenix, AZ 85007

Traffic Records Section
ARIZONA DEPARTMENT OF TRANSPORTATION
206 South 17th Avenue, MD - 064R
Phoenix, AZ 85007

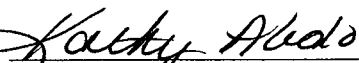
1 Richard Costa, Associate Engineer
2 Capital Engineering Division
3 City of Peoria
4 8401 W. Monroe Street
5 Peoria, AZ 85345

6 Christopher Kempley, Chief Counsel
7 Legal Division
8 ARIZONA CORPORATION COMMISSION
9 1200 West Washington Street
10 Phoenix, AZ 85007

11 Charles H. Hains, Attorney
12 Legal Division
13 ARIZONA CORPORATION COMMISSION
14 1200 West Washington Street
15 Phoenix, AZ 85007

16 Brian Lehman, Railroad Supervisor
17 Railroad Safety Section
18 ARIZONA CORPORATION COMMISSION
19 1200 West Washington St.
20 Phoenix, AZ 85007

21 ARIZONA REPORTING SERVICE
22 2627 North Third Street, Suite Three
23 Phoenix, AZ 85004-1103

24 
25 Kathy Abdo

26 I:\USERS\steveb\Engineering\Cotton Crossing Upgrade Application to ACC\Certification of Notice RR-02635B-08-0169.doc

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MIKE GLEASON, Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 KRISTIN K. MAYES
7 GARY PIERCE

APR 3 2008

8 IN THE MATTER OF THE APPLICATION OF
9 THE CITY OF PEORIA TO UPGRADE AN
10 EXISTING CROSSING OF THE BURLINGTON
11 NORTHERN AND SANTA FE RAILWAY AT
12 81ST AVENUE IN THE CITY OF PEORIA,
13 MARICOPA COUNTY, ARIZONA, AT
14 AAR/DOT NO. 025-405-Y.

DOCKET NO. RR-02635B-08-0169

PROCEDURAL ORDER

11 **BY THE COMMISSION:**

12 On March 21, 2008, the City of Peoria ("City") filed with the Arizona Corporation
13 Commission ("Commission") an application for approval for the Burlington Northern and Santa Fe
14 Railway Company ("Railroad") to upgrade an existing crossing at the Railroad's tracks at 81st
15 Avenue in the City of Peoria, Maricopa County, Arizona, at AAR/DOT No. 025-405-Y.

16 Pursuant to A.A.C. R14-3-101, the Commission now issues this Procedural Order to govern
17 the preparation and conduct of this proceeding.

18 IT IS THEREFORE ORDERED that the request of the City of Peoria shall be considered an
19 application for the Railroad to upgrade an existing crossing pursuant to A.R.S. § 40-337, et seq.

20 IT IS FURTHER ORDERED that the Railroad shall be considered as the Respondent in this
21 proceeding.

22 IT IS FURTHER ORDERED that the **hearing** on the application shall be held on **May 21,**
23 **2008, at 9:30 a.m.,** or as soon thereafter as is practical, at the Commission's offices, Hearing Room
24 1, 1200 West Washington Street, Phoenix, Arizona.

25 IT IS FURTHER ORDERED that within five business days of receipt of this Procedural
26 Order, **THE CITY OF PEORIA SHALL PROVIDE THE RAILROAD AND ANY OTHER**
27 **MUNICIPALITY OR INTERESTED PARTY** that may be affected by the application with a copy
28 of the application and this Procedural Order by certified mail.

1 IT IS FURTHER ORDERED that Safety Division, Railroad Safety Section ("Staff") shall
2 prepare a written **Staff Report and associated exhibits** to be presented at hearing and file copies of
3 them with Docket Control on or before 4:00 p.m. on **May 2, 2008**.

4 IT IS FURTHER ORDERED that any **objections to the Staff Report and associated**
5 **exhibits** shall be reduced to writing and filed with Docket Control on or before 4:00 p.m. on **May 12,**
6 **2008**.

7 IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-3-
8 105, except that all motions to intervene must be filed on or before **May 9, 2008**.

9 IT IS FURTHER ORDERED that the City of Peoria shall provide public notice of the
10 hearing in this matter, in the following form and style:

11 **PUBLIC NOTICE OF THE HEARING IN THE MATTER OF THE**
12 **APPLICATION OF THE CITY OF PEORIA TO UPGRADE AN EXISTING**
13 **CROSSING OF THE BURLINGTON NORTHERN AND SANTA FE**
14 **RAILWAY AT 81ST AVENUE IN THE CITY OF PEORIA, MARICOPA**
15 **COUNTY, ARIZONA, AT AAR/DOT NO. 025-405-Y.**
16 **(DOCKET NO. RR-02635B-08-0169)**

17 On March 21, 2008, the City of Peoria ("City") filed with the Arizona Corporation
18 Commission ("Commission") an application for approval for the Burlington Northern
19 and Santa Fe Railway Company ("Railroad") to upgrade an existing crossing at the
20 Railroad's tracks at 81st Avenue, in Peoria, Arizona, at AAR/DOT No. 025-405-Y.

21 The application is available for inspection during regular business hours at the offices
22 of the Commission in Phoenix, at 1200 West Washington Street, Phoenix, Arizona,
23 and on the internet via the Commission website (www.azcc.gov) using the e-docket
24 function.

25 The Commission will hold a hearing on this matter commencing on **May 21, 2008,**
26 **at 9:30 a.m.,** at the Commission's offices, 1200 West Washington Street, Phoenix,
27 Arizona. Public comments will be taken on the first day of the hearing.

28 The law provides for an open public hearing at which, under appropriate
circumstances, interested parties may intervene. Intervention shall be permitted to
any person entitled by law to intervene and having a direct and substantial interest in
the matter. Persons desiring to intervene must file a written motion to intervene with
the Commission, which motion should be sent to Applicant or its counsel and to all
parties of record, and which, at the minimum, shall contain the following:

1. The name, address, and telephone number of the proposed intervenor and of
any party upon whom service of documents is to be made if different than the
intervenor.
2. A short statement of the proposed intervenor's interest in the proceeding (e.g.,

a customer of Railroad, a neighboring property owner, a crossing user, etc.).

3. A statement certifying that a copy of the motion to intervene has been mailed to the Applicant or its counsel and to all parties of record in the case.

The granting of motions to intervene shall be governed by A.A.C. R14-3-105, except that all motions to intervene must be filed on or before May 9, 2008. The granting of intervention, among other things, entitles a party to present sworn evidence at hearing and to cross-examine other witnesses. However, failure to intervene will not preclude any customer from appearing at the hearing and making a statement on such customer's own behalf.

If you have any questions about this application, you may contact the applicant at [insert telephone number]. If you wish to file written comments on the application or want further information on intervention, you may write the Consumer Services Section of the Commission at 1200 West Washington Street, Phoenix, Arizona 85007 or call 1-800-222-7000 or appear at the hearing and make comment.

The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Linda Hogan, ADA Coordinator, voice phone number (602) 542-3931, E-mail lhogan@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

IT IS FURTHER ORDERED that City of Peoria shall cause the above notice to be published at least once in a newspaper of general circulation in the city where the crossing is located, with publication to be completed no later than April 25, 2008.

IT IS FURTHER ORDERED that notice shall be deemed complete upon the mailing/publication of same, notwithstanding the failure of an individual or entity to read or receive the notice.

IT IS FURTHER ORDERED that the CITY OF PEORIA SHALL FILE CERTIFICATION OF NOTICE WITH THE COMMISSION'S DOCKET CONTROL AS SOON AS PRACTICABLE after the publication of notice ordered herein has been completed.

IT IS FURTHER ORDERED that the presiding Administrative Law Judge may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

DATED this 1st day of April, 2008.



MARC E. STERN
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed/delivered this 1st day of April, 2008 to:

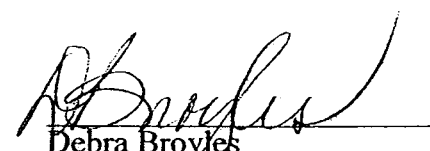
Richard Costa, Associate Engineer
Capital Engineering Division
CITY OF PEORIA
8401 West Monroe Street
Peoria, Arizona 85345

Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Melvin V. Thomas, Manager
Public Projects
BURLINGTON NORTHERN SANTA FE
RAILWAY COMPANY
740 East Carnegie Drive
San Bernardino, California 92408

ARIZONA REPORTING SERVICE, INC.
2200 North Central Avenue, Suite 502
Phoenix, AZ 85004-1481

Bruce Vana, P.E., Engineer-Manager
Utility & Railroad Engineering Section
ARIZONA DEPARTMENT OF
TRANSPORTATION
205 South 17th Avenue, M/D 618E
Phoenix, Arizona 85007

By: 
Debra Broyles
Secretary to Marc Stern

Traffic Records Section
ARIZONA DEPARTMENT OF
TRANSPORTATION
206 S. 17th Avenue, MD-064R
Phoenix, AZ 85007

Brian Lehman, Railroad Supervisor
Railroad Safety Section
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007



City of Peoria

Engineering

8401 West Monroe Street, Peoria, Arizona 85345

Ph: 623-773-7210 Fax: 623-773-7211

April 7, 2008

RECEIVED
APR 23 2008

VIA Certified Mail

OFFICE OF THE CITY ATTORNEY
PEORIA, ARIZONA

RE: 81st Ave (Future Cotton Crossing), BNSF Railroad Crossing Improvements
Arizona Corporation Commission Application Letter
City of Peoria Project No. P-0012
Burlington Northern Santa Fe Railway Company Project # U.S. DOT Number 025405Y
Phoenix Subdivision, Mile Post 180.0, Line Segment 7208

To Whom It May Concern:

On March 21, 2008, the City of Peoria ("City") filed an Application with the Arizona Corporation Commission ("ACC") to widen the existing 81st Avenue/Burlington Northern Santa Fe Railway Company ("BNSF") Railroad at grade railroad crossing in the City of Peoria. For future reference and being consistent with our application, the roadway improvements, when completed, will ultimately be renamed Cotton Crossing.

This roadway widening and subsequent railroad improvement project will widen the existing railroad crossing from a two lane roadway crossing to a six-lane major arterial roadway with both left and right turn lanes in both directions. This work is consistent with the City's ultimate plan to realign 83rd Avenue from Mountain View Road to Peoria Avenue. In addition, roadway improvements to Grand Avenue (US 60) will be required at this intersection to widen Grand Avenue for new turn lanes and roadway pavement grade adjustments in both directions. Included with the proposed project will be the addition of new raised medians, new sidewalks, curbs, sidewalk ramps, utility pipeline crossings, and traffic signal improvements. Additionally, BNSF is requiring modifications to the existing railroad flasher signals, gate arms, and railroad crossing warning devices to accommodate the widened roadway. I have enclosed an exhibit showing the proposed improvements identified in the City's Application to the ACC for your use.

As part of the application process, the ACC is requiring that the City provide BNSF and any other municipality or interested party, which may be affected by the City's Application, with notice of such (i.e., a copy of the Application and the Procedural Order). Enclosed please find both documents. If you have any questions, please feel free to contact me at (623) 773-7951 or via e-mail at Richard.costa@peoriaaz.gov.

Sincerely,

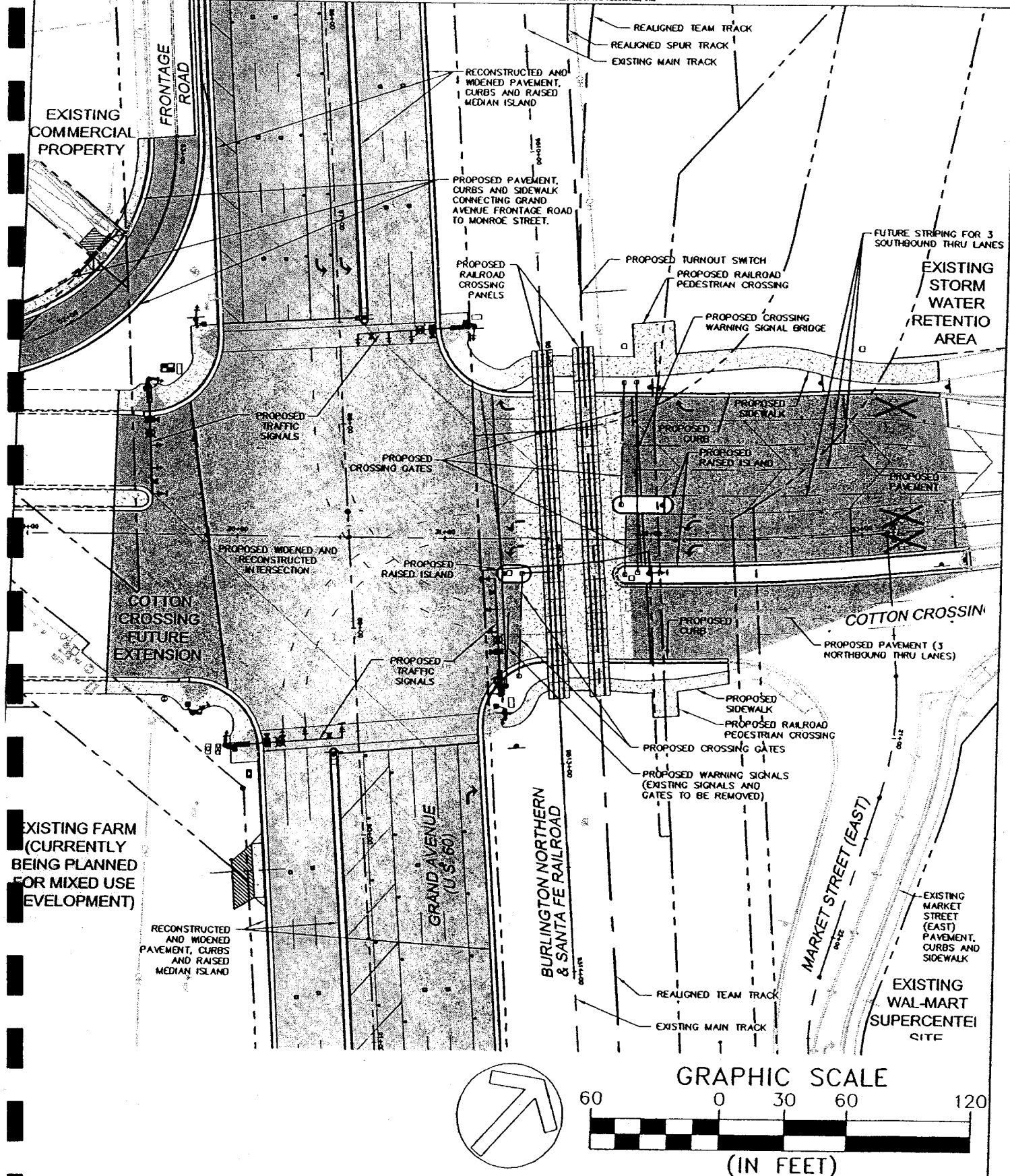
A handwritten signature in cursive script that reads "Richard Costa".

Richard Costa
Associate Engineer

Enclosures

RC:db:jb
I:\PROJECTS\p-0012_83rd Ave Realignment_Cotton Crossing(P1)\BNSF\Arizona Corporation Commission\Step 2-Procedural Order\Letter_Interested Parties_040808.doc

www.peoriaaz.gov/engineering





City Of Peoria
Engineering Department
Capital Improvement Projects
8401 W. Monroe Street
Peoria, AZ 85345-6560
(623) 773-7210
FAX: (623) 773-7211

LETTER OF TRANSMITTAL

TO: Arizona Corporation Commission Office of Railroad Safety 200 W. Washington St Phoenix, Az. 85007	DATE: March 18, 2008	ENGINEERING NO. P-0012
	ATTENTION: Chris Watson	
	RE: Peoria Avenue, BNSF Railroad Grade Crossing Application; Wal-Mart Store #1533-03, Peoria Arizona	

- WE ARE SENDING YOU the following items:
- ☒ Application Letter (1-Original, 13 copies)
 - ☒ Executed Agreement with BNSF Railroad (14 copies)
 - ☒ Project Improvements Map (14 copies)

Remarks: Chris, based upon the Arizona Corporation Commission procedure manual for requesting upgrading an existing railroad crossing, attached are the required documents for application to the Commission for approval. The subject crossing being proposed is a widening of an existing at grade crossing formerly referred to as the 81st Ave and now to be named Cotton Crossing. I understand that the complete application approval process can take from 60 to 90 days to complete. We will be expecting to receive a procedural order from an Administrative Law Judge, as outlined in your procedure manual, once application is made to the Commission. Please let me know as soon as possible if our initial application is incomplete so I can make any corrections.

Richard Costa, City of Peoria Engineering, Capital Division (623-773-7951)

COPY TO: File, David Morris, Kimley Horn & Assoc (w/encl by e-mail); Kevin Sweet, Wal-Mart Stores (w/encl by e-mail); Joshua Rogers, Wal-Mart Stores, Real Estate Dept. (w/encl by e-mail); Dani Ziem, Wal-Mart Stores, Design Manager (w/encl by e-mail); Jay Schneider, Frontera Development Inc., Design Manager (w/encl by e-mail);

SIGNED: <i>Richard Costa</i>



ENGINEERING DEPARTMENT

Capital Engineering Division
8401 W. Monroe Street, Peoria, Arizona 85345
Phone: (623) 773-7212
Fax: (623) 773-7211

March 18, 2008

Mr. Chris Watson
Arizona Corporation Commission
Office of Railroad Safety
1200 W. Washington St
Phoenix, Az. 85007

RE: Cotton Crossing, BNSF Railroad Crossing Improvements
Application Letter
City of Peoria Project No. P-0012, 025405Y
Burlington Northern Sante Fe Railway Company Project # U.S. DOT Number ~~0245403K~~
Phoenix Subdivision, Mile Post 180.0, Line Segment 7208

Mr. Watson:

The City of Peoria (City) is in the process of completing the final design and permitting process needed to widen the existing 81st Avenue/Burlington Northern Sante Fe Railway (BNSF) at grade railroad crossing located in the City of Peoria. For future reference and being consistent with this application letter, the roadway will ultimately be named Cotton Crossing. This roadway widening and subsequent railroad improvement project is part of our ultimate plan to realign 83rd Avenue from Mountain View Road to Peoria Avenue around the Old Town Peoria historic neighborhood, provide a regional traffic management benefit to both south and central Peoria, and still maintain local roadway connections.

This subject widening of the existing two lane at grade BNSF railroad crossing to a six-lane arterial roadway with both left and right turn lanes in both directions will be consistent with our Central Peoria Revitalization Plan (1999), 83rd Avenue, Realignment DCR (2003), and the City General Plan (2006). The railroad crossing is located adjacent to Grand Avenue (US60) within the City, specifically at BNSF Railway mile post marker 180.0.

The City considered a grade separated crossing (depress and elevated) and given existing adjacent roadway constraints (US60 - Grand Avenue), as well as economic, social, and planning/zoning impacts to the City, a new grade separation was not recommended as a viable option. The City, by benefit of an existing railroad agreement with BNSF Railroad, and the subsequent new supplemental Grade Crossing Signal Installation Agreement (attached), has received the necessary approval from BNSF Railroad to widen the existing at grade railroad crossing. BNSF Railroad by Agreement with the City, will install all new crossing gates, flashers, constant warning devices, signals and associated equipment in accordance with their design guidelines. The City has agreed to install and maintain all roadway advance warning signs & pavement markings in accordance with MUTCD guidelines. This project is being fully funded by a private developer with subsequent cost share participation by the City. It is our intention for this application letter to the Arizona Corporation Commission to begin the approval process for this railroad crossing improvement.

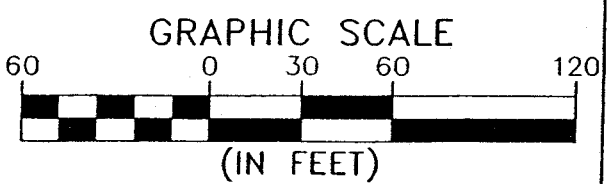
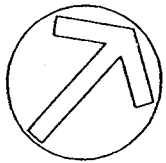
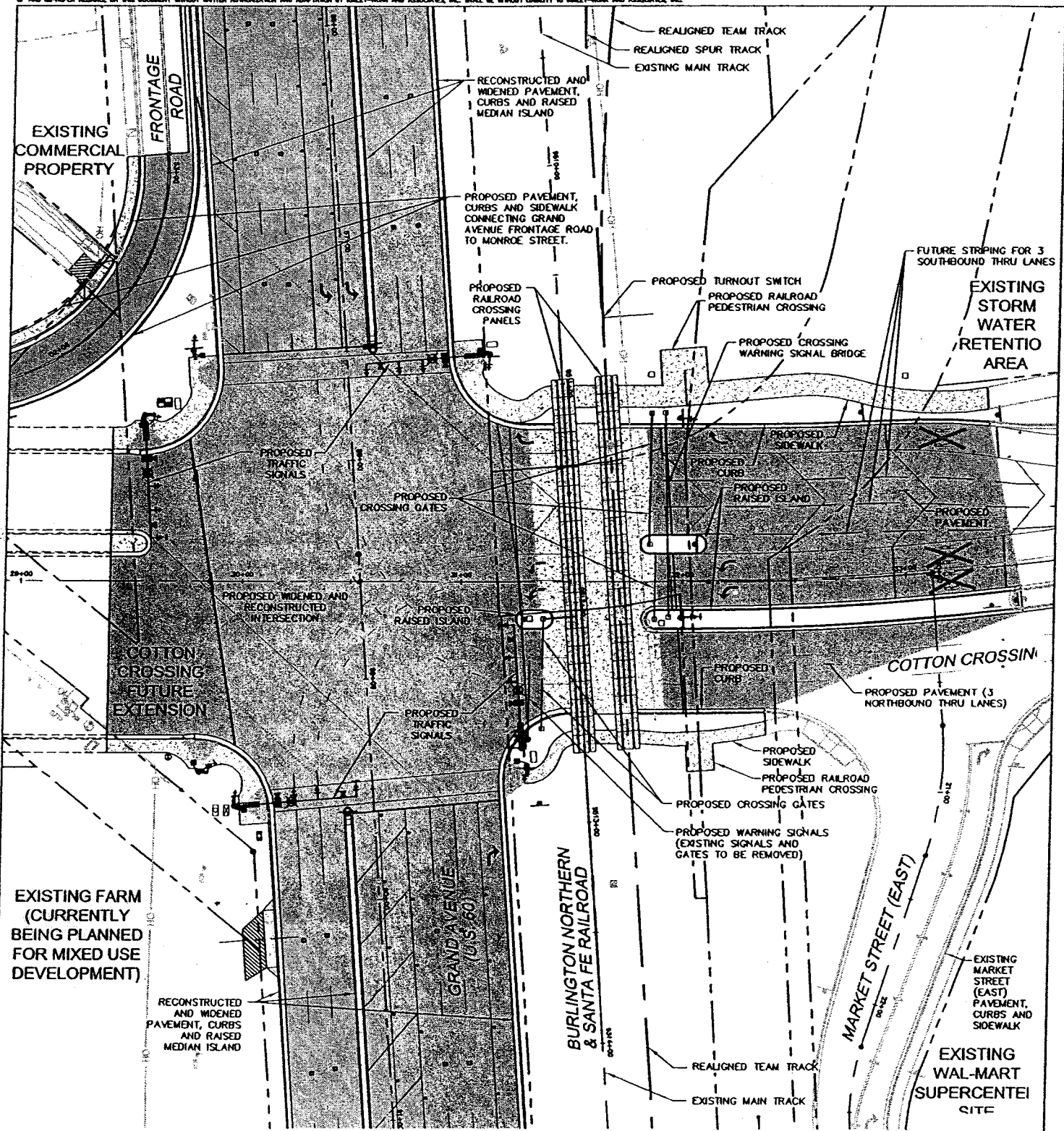
If you have any questions please feel free to contact me at (623) 773-7951.


Sincerely,

A handwritten signature in cursive script that reads "Richard Costa".

Richard Costa,
Associate Engineer

K:\CH\91502023\Correspondence\AZ Corp Commission\Exhibits\Railroad Grade Crossing Upgrade Brt.dwg Mar 06, 2008 heatherhirschberg
 XREFS: x502023VF-BRADY-TR x502023M0SP2 2807bm01.dwg Interconnect plans
 THIS DOCUMENT, TOGETHER WITH THE CONCEPTS AND DESIGN PRESENTED HEREIN, AS AN INSTRUMENT OF SERVICE, IS INTENDED ONLY FOR THE SPECIFIC PURPOSE AND CLIENT FOR WHICH IT WAS PREPARED. RELIANCE
 OF AND UNPROPER RELIANCE ON THIS DOCUMENT WITHOUT WRITTEN AUTHORIZATION AND ADAPTATION BY KIMLEY-HORN AND ASSOCIATES, INC. SHALL BE WITHOUT LIABILITY TO KIMLEY-HORN AND ASSOCIATES, INC.



PROJECT NO. 91502023	BNSF RAILROAD LINE SEGMENT 7208 COTTON CROSSING (81ST AVE) GRADE CROSSING UPGRADE PEORIA, ARIZONA	SCALE (H): 1"=60'	 Kimley-Horn and Associates, Inc. © 2008 KIMLEY-HORN AND ASSOCIATES, INC. 7076 North 16th Street, Suite 300 Phoenix, Arizona 85028 (602) 844-5500		
DRAWING NAME 1 OF 1		SCALE (V): NONE DESIGNED BY: KHA DRAWN BY: KHA CHECKED BY: DM DATE: 03/06/08		NO.	REVISION

LAW DEPARTMENT APPROVED

Cotton Crossing, Peoria, AZ
 Mile Post 180.10
 Line Segment 7208
 U.S. DOT Number 025405Y
 SUB Phoenix

GRADE CROSSING SIGNAL INSTALLATION AGREEMENT

THIS GRADE CROSSING SIGNAL INSTALLATION AGREEMENT (hereinafter called, "Agreement"), is executed to be effective as of 12/6/07, 2007, by and between the City of Peoria, a Political Subdivision of the State of Arizona/a Municipal Corporation, herein represented and acting through its City Council (hereinafter called, "AGENCY"), and BNSF Railway Company, a Delaware Corporation (hereinafter called, "RAILROAD");

WITNESSETH:

WHEREAS, in the interest of aiding vehicular travel and public safety, the AGENCY is undertaking a project to replace railroad crossing signals and activation equipment known as the Cotton Crossing;

WHEREAS, the project Cotton Crossing is located at U.S. DOT crossing 025405Y as indicated on exhibit "A", attached hereto and incorporated herein;

WHEREAS, the parties agree that the RAILROAD will receive no ascertainable benefit from the replacement of advance warning signs, pavement marking stop bars or crossing signal equipment (hereinafter collectively called, "Crossing Signal Equipment");

WHEREAS, AGENCY also desires RAILROAD to widen the existing crossing surface at the Cotton Crossing with a new concrete and rubber crossing surface;

WHEREAS, the AGENCY is paying for the acquisition and installation of crossing signal equipment and the new crossing surface at the Cotton Crossing;

WHEREAS, the RAILROAD agrees to purchase and install, at AGENCY'S sole expense, the crossing signal equipment and the new crossing surface described in the scope of work herein, and upon the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I - SCOPE OF WORK

1. The term "Project" as used in this agreement includes any and all work related to the installation of crossing signals and activation equipment at U.S. DOT crossing 025405Y more particularly described on Exhibits A and B attached hereto and incorporated herein, including, but not limited to, any and all changes to telephone, telegraph, signal and electrical lines and appurtenances, installation of advance warning signs and pavement marking stop bars, installation of any new crossing surface, temporary and permanent track work, fencing, grading, alterations to or new construction of drainage facilities, preliminary and construction engineering and contract preparation.

ARTICLE II - RAILROAD OBLIGATIONS

In consideration of the covenants of AGENCY set forth herein and the faithful performance thereof, RAILROAD agrees as follows:

1. The RAILROAD will, using its own labor forces under applicable labor agreements, install the Crossing

L CON 08307

Signal Equipment, install the new crossing surface, and replace siding tracks and turnout switches at Cotton Crossing. The work will be performed at AGENCY's expense and in accordance with the MUTCD and the plans and specifications approved by AGENCY and the Federal Highway Administration. The plans and specifications are attached to this Agreement as Exhibit "B" and incorporated herein.

2. A detailed estimate of RAILROAD'S construction engineering, installation labor (including the costs, if any, of electrical service from a public utility) and material costs required for the Project are attached hereto as Exhibit "D" and incorporated herein. In the event construction for the Project has not commenced within six (6) months following the effective date of this Agreement, RAILROAD may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit "D". In such event, the revised cost estimates will become a part of this Agreement as though originally set forth herein. Any item of work incidental to the items listed on Exhibit D not specifically mentioned therein may be included as a part of this Agreement upon written approval of AGENCY, which approval will not be unreasonably withheld.
3. RAILROAD will furnish all labor, materials, tools and equipment for the railroad portion of the work required for the construction of the Project.
4. The RAILROAD will, at AGENCY'S expense, dispose of all scrap from the RAILROAD'S work hereunder.
5. The RAILROAD will finalize and complete billing of all incurred costs under this Agreement no later than six (6) months (180 days) following installation of the Crossing Signal Equipment and the new crossing surface.

ARTICLE III - AGENCY OBLIGATIONS

In consideration of the covenants of RAILROAD set forth herein and the faithful performance thereof, AGENCY agrees as follows:

1. AGENCY must perform, at AGENCY'S expense, the following work:
 - a) Installation of a pavement marking stop bar in accordance with the Manual on Uniform Traffic Control Devices (hereinafter called, "MUTCD").
 - b) Installation of advance warning signs in accordance with the MUTCD.
2. The AGENCY will approve the location of the signals and signal bungalow prior to installation by RAILROAD.
3. Actual costs for engineering, materials and labor (including third party charges for the installation of electrical service) associated with the installation of the Crossing Signal Equipment and the new crossing surface must be paid by the AGENCY.
4. In the event the services of a consultant are needed after execution of this Agreement due to any exigency of the RAILROAD and the Project, the AGENCY and the RAILROAD will mutually agree, in writing, as to the selection of a consultant and the applicable scope of work to be performed by such consultant. All work performed hereunder by any consultant and any resulting costs must be paid by AGENCY as a part of the costs for the Project.
5. During the installation of the Crossing Signal Equipment and the new crossing surface of, RAILROAD will send AGENCY progressive invoices detailing the costs of the work performed by RAILROAD under this Agreement. AGENCY must reimburse RAILROAD for completed force-account work within thirty (30) days of the date of the invoice for such work. Upon completion of the Project, RAILROAD will send AGENCY a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit D. Pursuant to this section, AGENCY must pay the final invoice within ninety (90) days of the date of the final invoice. RAILROAD will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past its credit terms. The finance charge continues to accrue daily until the date payment is received by RAILROAD, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any unposted payments received by the month's end. Finance charges will be noted on invoices sent to AGENCY under this section.

L CON 08307

6. The AGENCY must have advanced railroad crossing warning signs and standard pavement markings in place at the crossing shown on Exhibit "A" (if the same are required by the MUTCD) prior to the acceptance of this Project by the AGENCY. The AGENCY assumes full responsibility for the maintenance of advanced warning signs and pavement markings and agrees to hold harmless and indemnify the RAILROAD for any claims, damages or losses, in whole or in part, caused by or due to the AGENCY'S failure to maintain the advanced warning signs and markings or other requirements of the MUTCD.

7. The AGENCY must give RAILROAD's Manager of Public Projects written notice to proceed with the railroad portion of the work after receipt of necessary funds for the Project. BNSF will not begin the railroad work (including, without limitation, procurement of supplies, equipment or materials) until written notice to proceed is received from Agency.

ARTICLE IV-JOINT OBLIGATIONS

In consideration of the mutual covenants of the parties contained herein and the premises, the parties mutually agree as follows:

1. All cost records of the RAILROAD pertaining to the Project will be open to inspection and audit at any reasonable time by representatives of the AGENCY (including the legislative auditor and fiscal analyst for the AGENCY) for a period of one (1) year from the date of the final RAILROAD invoice under this Agreement.

2. Upon completion of the installation of the Crossing Signal Equipment and the new crossing surface, the RAILROAD, will, at its sole cost and expense, operate and maintain the Crossing Signal Equipment and the new crossing surface in proper condition.

3. Notwithstanding the preceding provision, if any regulations, ordinances, acts, rules or other laws subsequently passed or amended by the AGENCY or any other appropriate governmental or legislative authority increase the AGENCY'S portion of maintenance costs under this Agreement, RAILROAD will receive the benefit of any such regulations, ordinances, acts, rules or other laws and the AGENCY'S increased portion of maintenance costs will be incorporated into and made a part of this Agreement.

4. If a railway or a highway improvement project necessitates rearrangement, relocation, or alteration of the Crossing Signal Equipment or the new crossing surface installed hereunder, the costs for such rearrangement, relocation or alteration will be the responsibility of the party requesting such changes.

5. If any of the Crossing Signal Equipment is partially or wholly destroyed, then such repair and/or replacement costs must be distributed among the parties as follows:

a) In the event the RAILROAD's sole negligence destroys or damages the Crossing Signal Equipment, RAILROAD must reimburse AGENCY for the costs to replace or repair such Crossing Signal Equipment.

b) In the event the Crossing Signal Equipment is damaged or destroyed by any other cause, AGENCY must, at its sole cost and expense, replace or repair such Crossing Signal Equipment.

6. If the Crossing Signal Equipment installed hereunder cannot, through age, be maintained, or, by virtue of its obsolescence, requires replacement, the cost of installation of new crossing signal equipment will be negotiated by the parties hereto on the basis of the current Federal Aid Railroad Signal Program participation and applicable AGENCY at the time of such replacement is warranted.

7. This Agreement will inure to the benefit of and be binding on the parties hereto, their successors, and assigns.

8. In the event any paragraph contained in this Agreement or any item, part, or term within any particular paragraph is determined by a court of competent jurisdiction to be invalid or unenforceable, the validity of the remaining paragraphs or items will not be affected; and the rights and obligations of the parties will be construed and enforced as if this Agreement did not contain that particular paragraph or item held to be invalid or unenforceable.

9. This Agreement may be signed in counterparts, any one of which will be deemed to be an original. The parties further agree that any facsimile copy of a party's signature is valid and binding to the same extent as an original signature.

L CON 08307

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

BNSF RAILWAY COMPANY

By: DL Freeman 12/6/07

Printed Name: DAVID L. FREEMAN

Title: VP ENGINEERING

CITY OF PEORIA

By: Terrence L. Ellis

Printed Name: Terrence L. Ellis

Title: City Manager

ATTEST:

Mary Jo Kief
Mary Jo Kief, City Clerk

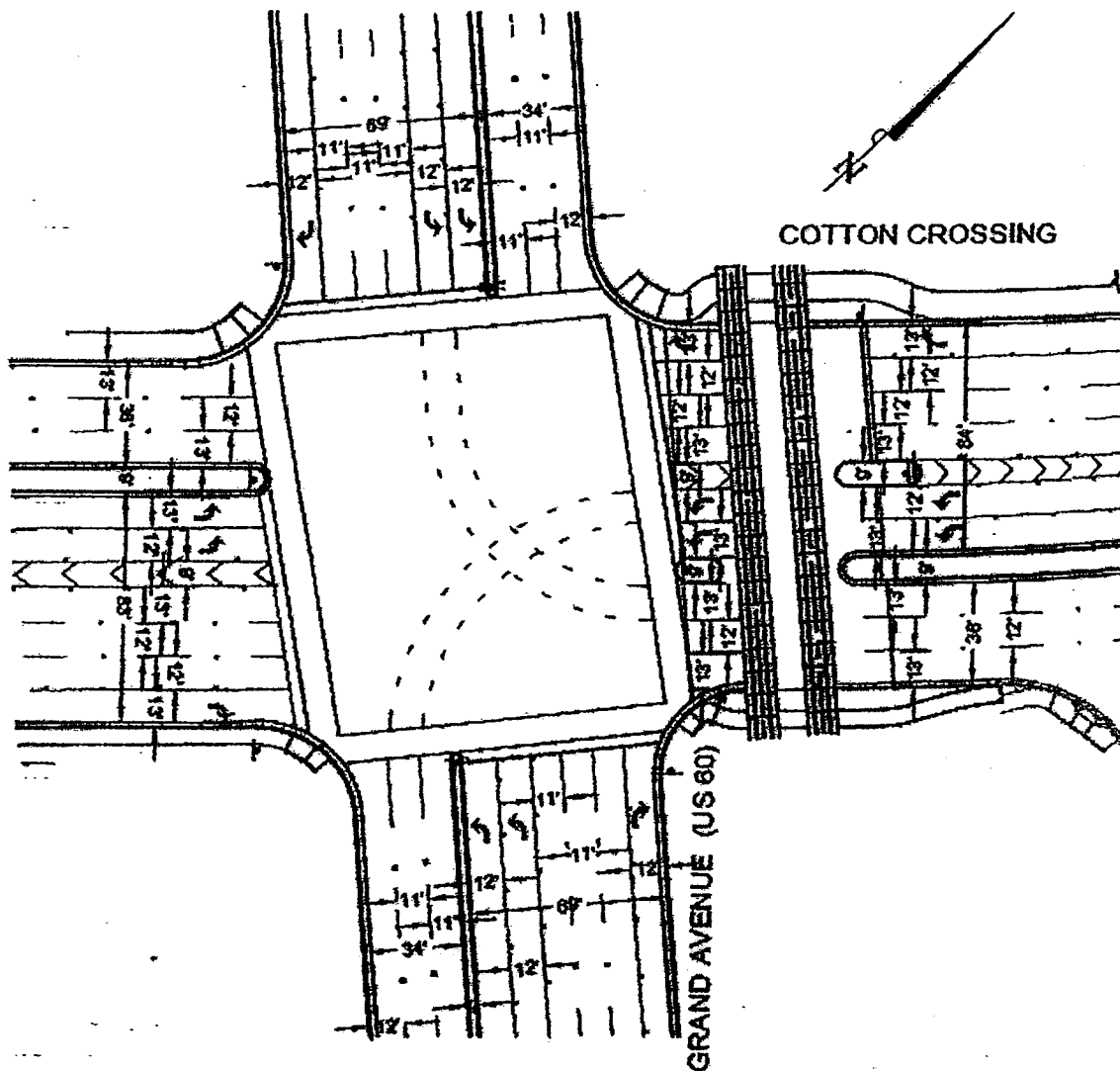


APPROVED AS TO FORM:

Stephen M. Kemp
Stephen M. Kemp, City Attorney

L CON 08307

Exhibit "A"- Drawing of Crossing



CON 08307

Exhibit "B" – see attached EXHIBIT B - easement

L 69N 0830Z

When Recorded Return To:

City of Peoria
8401 W. Monroe
Peoria, AZ 85345

030481-11-1-1--
Hoyp

Caption Heading: Memorandum of Easement

Do Not Remove

This is part of the official document

BNSF – Cotton Crossing

Law Department Approved

Memorandum of Easement

THIS MEMORANDUM OF EASEMENT is hereby executed this 29th day of February, 2008, by and between BNSF RAILWAY COMPANY, a Delaware corporation ("Grantor"), whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131, and the City of Peoria, an Arizona municipal corporation ("Grantee"), whose address for purposes of this instrument is 841 W MONROE ST PEORIA, AZ 85345, which terms "Grantor" and "Grantee" shall include, wherever the context permits or requires, singular or plural, and the heirs, legal representatives, successors and assigns of the respective parties:

WITNESSETH:

WHEREAS, Grantor owns or controls certain real property situated in Peoria, Maricopa County, Arizona as described on Exhibit "A" attached hereto and incorporated herein by reference (the "Premises");

WHEREAS, Grantor and Grantee entered into an Easement Agreement, dated FEBRUARY 29, 2008 (the "Easement Agreement") which set forth, among other things, the terms of an easement granted by Grantor to Grantee over and across the Premises (the "Easement"); and

WHEREAS, Grantor and Grantee desire to memorialize the terms and conditions of the Easement Agreement of record.

For valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor does grant unto Grantee and Grantee does hereby accept from Grantor the Easement over and across the Premises.

The term of the Easement, unless sooner terminated under provisions of the Easement Agreement, shall be perpetual. The term of the Temporary Easement, unless sooner terminated under provisions of this Easement Agreement, shall expire on the date that is one (1) year after the Effective Date or completion of the project, whichever occurs. Provisions regulating the use and purposes to which the Easement shall be limited, are set forth in detail in the Easement Agreement and Grantor and Grantee agree to abide by the terms of the Easement Agreement.

All the terms, conditions, provisions and covenants of the Easement Agreement are incorporated herein by this reference for all purposes as though written out at length herein, and both the Easement Agreement and this Memorandum of Easement shall be deemed to constitute a single instrument or document. This Memorandum of Easement is not intended to amend, modify, supplement, or supersede any of the provisions of the Easement Agreement and, to the extent there may be any conflict or inconsistency between the Easement Agreement or this Memorandum of Easement, the Easement Agreement shall control.

L CON 08307B

Law Department Approved

IN WITNESS WHEREOF, Grantor and Grantee have executed this Memorandum of Easement to as of the date and year first above written.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By:

Name:

David P. Schneider

Title:

General Director - Land Revenue Management

STATE OF TEXAS

§

COUNTY OF TARRANT

§

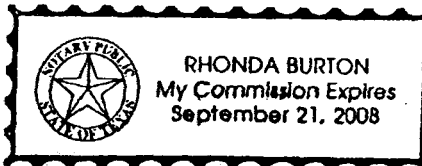
This instrument was acknowledged before me on the 29th day of February, 2008, by David P. Schneider (name) as General Director - Land Revenue Manager (title) of BNSF RAILWAY COMPANY, a Delaware corporation.

Notary Public

(Seal)

My appointment expires:

9/21/2008



L CON 08307B

Law Department Approved

GRANTEE:

City of Peoria, an Arizona municipal corporation

By:

Name: Terrence L. Ellis

Title: City Manager

STATE OF Arizona §COUNTY OF Maricopa §

This instrument was acknowledged before me on the 8th day of November, 2007, by Terrence L. Ellis (name) as City Manager (title) of City of Peoria, AZ, a municipal corporation, on behalf of the corporation.

Notary Public

(Seal)

My appointment expires:



OFFICIAL SEAL
BARBARA A. DERUITER
NOTARY PUBLIC - State of Arizona
MARICOPA COUNTY
My Comm. Expires Jan. 24, 2011.

ATTEST:

Mary Jo Kief
Mary Jo Kief, City Clerk



APPROVED AS TO FORM:

Stephen M. Kemp
Stephen M. Kemp, City Attorney

L CON 08307B

**BRADY • AULERICH & ASSOCIATES, INC.**

Civil Engineering • Land Surveying
Construction Staking

C.E. Aulerich	P.L.S.
Dennis H. Brady	P.L.S.
Brent L. Henderson	P.E.
Robert N. Hermon	P.E./P.L.S.
John R. Colling	P.L.S.
Greg Rugland	R.L.S.

EXHIBIT A

**LEGAL DESCRIPTION: ROADWAY AND PUBLIC UTILITY EASEMENT,
PARCEL 1**

A portion of the Northwest quarter of Section 26, Township 3 North, Range 1 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

Beginning at the Point of Beginning of that certain parcel described in Docket 13138, Pages 752 thru 759, Maricopa County Records;

thence North 46° 03' 39" West, along the Southerly right-of-way line of the Atchison Topeka and Santa Fe Railroad, a distance of 16.63 feet to a point on the West line of the Northeast quarter of the said Northwest quarter of Section 26, from which a ¾" iron pipe at the Southwest corner of said Northeast quarter of the Northwest quarter of Section 26 bears South 01° 02' 57" East, a distance of 212.62 feet;

thence continuing North 46° 03' 39" West, a distance of 43.40 feet;

thence North 48° 25' 19" East, a distance of 40.38 feet to a point on said West line of the Northeast quarter of the Northwest quarter of Section 26, from which a brass cap (flush) monument at the Northwest corner of said Northeast quarter of the Northwest quarter of Section 26 bears North 01° 02' 57" West, a distance of 1048.74 feet;

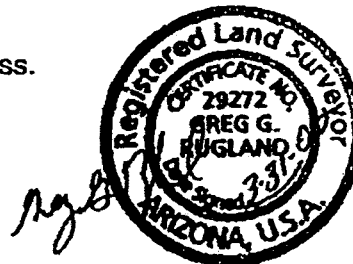
thence continuing North 48° 25' 19" East, a distance of 48.41 feet to a point on the Northerly right-of-way line of said Atchison Topeka and Santa Fe Railroad;

thence South 45° 15' 49" East, along said Northerly right-of-way line, a distance of 44.59 feet to a point on the arc of a non-tangent curve concave to the Northwest, a radial line of said curve through said point having a bearing of South 67° 58' 09" East, said point being a common point of that parcel described in said Docket 13138, Pages 752 thru 759;

thence along the perimeter of said parcel described in Docket 13138, Pages 752 thru 759, Southwesterly along the arc of said curve, to the right, having a radius of 117.00 feet, with a chord of South 32° 57' 23" West, 44.35 feet, and a central angle of 21° 51' 03" for an arc distance of 44.62 feet to a point of tangency;

thence continuing along said perimeter, South 43° 52' 54" West, a distance of 44.36 feet to the Point of Beginning.

Containing an area of 4,863 square feet or 0.1116 acres more or less.



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Dennis H. Brady
Brent L. Handerson
Robert N. Herman
John R. Colling
Greg Rugland

P.L.S.
P.L.S.
P.E.
P.E./P.L.S.
P.L.S.
P.L.S.

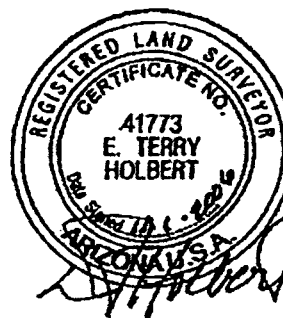
LEGAL DESCRIPTION**PARCEL 2**

BEING A PORTION OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 3 NORTH, RANGE 1 EAST, GILA AND SALT CREEK BASE AND MERIDIAN, STATE OF ARIZONA, COUNTY OF MARICOP BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Commencing at the Northwest Corner of said Northeast Quarter of the Northwest Quarter thence South along the west line thereof SOUTH 01°02'57" EAST 1105.66 feet to a point on the South Right-of-Way of the AT&SF Railroad; Thence departing said west line and along said South Right-of-Way SOUTH 46°03'39" EAST 82.63 feet to the point of beginning and through the following five (5) courses:

- 1) Continuing along said South Right-of-Way SOUTH 46°03'39" EAST 84.62 feet;
- 2) Thence departing said South Right-of-Way NORTH 48°25'19" EAST 79.64 feet to a point 5 feet distant and parallel, measured at right angles from the North Right-of-Way line of said Railroad;
- 3) Thence NORTH 45°15'19" WEST 94.57 feet to a point on a curve, concave northwesterly, having a radius of 183.00 feet from which point the radius bears NORTH 57°53'44" WEST;
- 4) Thence along said curve through a Central Angle of 11°26'38" an arc length of 36.55 feet;
- 5) Thence SOUTH 43°52'54" WEST 44.43 feet to the point of beginning.

Containing 7071 square feet or 0.16 acres, more or less



PAGE 2 OF 3

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BRADY AULERICH & ASSOCIATES, INC.

1030 E. Guadalupe Road

Tempe, Arizona 85283

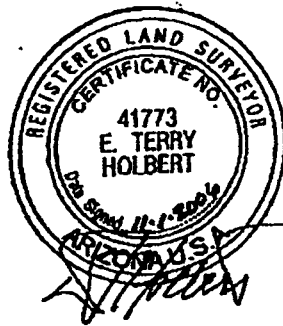
Phone (480) 839-4000 Fax (480) 345-9259

PAGE 3 OF 3 PAGES

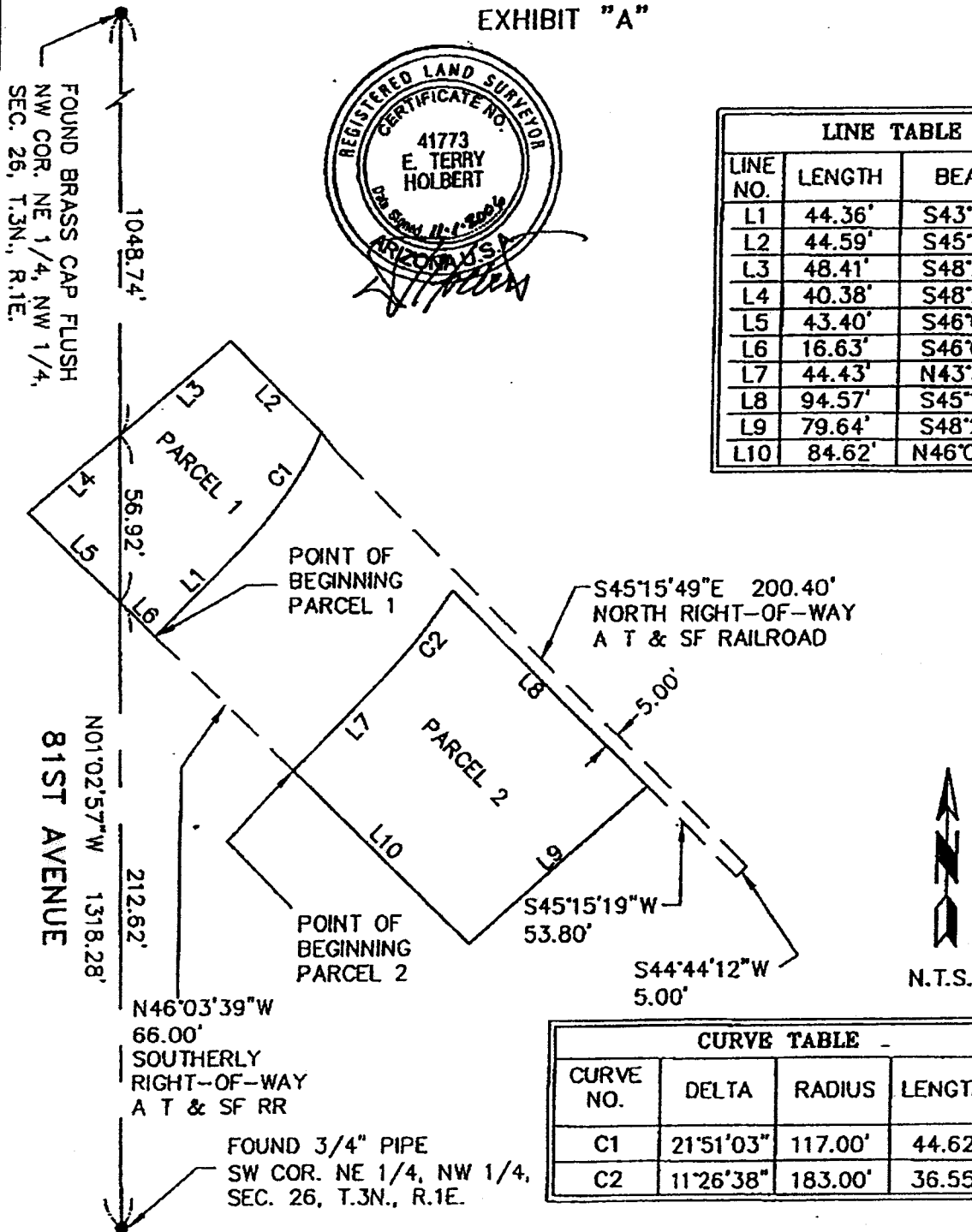
PROJECT: PEORIA CENTER STATION

DATE: 03/30/2006

EXHIBIT "A"



LINE TABLE		
LINE NO.	LENGTH	BEARING
L1	44.36'	S43°52'54"W
L2	44.59'	S45°15'49"E
L3	48.41'	S48°25'19"W
L4	40.38'	S48°25'19"W
L5	43.40'	S46°03'39"E
L6	16.63'	S46°03'39"E
L7	44.43'	N43°52'54"E
L8	94.57'	S45°15'49"E
L9	79.64'	S48°25'19"W
L10	84.62'	N46°03'39"W



CURVE TABLE			
CURVE NO.	DELTA	RADIUS	LENGTH
C1	21°51'03"	117.00'	44.62'
C2	11°26'38"	183.00'	36.55'

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Greg Rugland

P.L.S.
P.L.S.
P.E.
P.E./P.L.S.
P.L.S.
R.L.S.

EXHIBIT A**LEGAL DESCRIPTION: ROADWAY AND PUBLIC UTILITY EASEMENT**

A portion of the Southeast quarter of the Northwest quarter of Section 26, Township 3 North, Range 1 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at a $\frac{3}{4}$ " pipe at the Northwest corner of said Southeast quarter of the Northwest quarter of Section 26, from which the Northeast corner of said Southeast quarter of the Northwest quarter of Section 26 bears North $89^{\circ} 10' 33''$ East, a distance of 1326.93 feet;

thence North $87^{\circ} 10' 33''$ East, along the North line of said Southeast quarter of the Northwest quarter of Section 26, a distance of 391.54 feet to the Northeasterly corner of that certain parcel described in Docket No. 13138, Page 745, Maricopa County Records;

thence South $46^{\circ} 03' 39''$ East, a distance of 50.83 feet to the Point of Beginning, said point also being the Southeasterly corner of said parcel described in Docket 13138, Page 745;

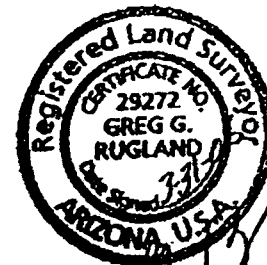
thence continuing South $46^{\circ} 03' 39''$ East, a distance of 154.06 feet along the Northerly right-of-way line of the Atchison Topeka and Santa Fe Railroad;

thence South $43^{\circ} 56' 21''$ West, a distance of 13.00 feet;

thence North $46^{\circ} 03' 39''$ West, parallel to and 13.00 feet Southerly of said Northerly railroad right-of-way, a distance of 166.29 feet to a point on the Easterly line of said parcel described in Docket 13138, Page 745;

thence North $87^{\circ} 10' 50''$ East, along said Easterly line, a distance of 17.85 feet to the Point of Beginning.

Containing an area of 2,082 square feet or 0.0478 acres more or less.



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BRADY AULERICH & ASSOCIATES, INC.

1030 E. Guadalupe Road

Tempe, Arizona 85283

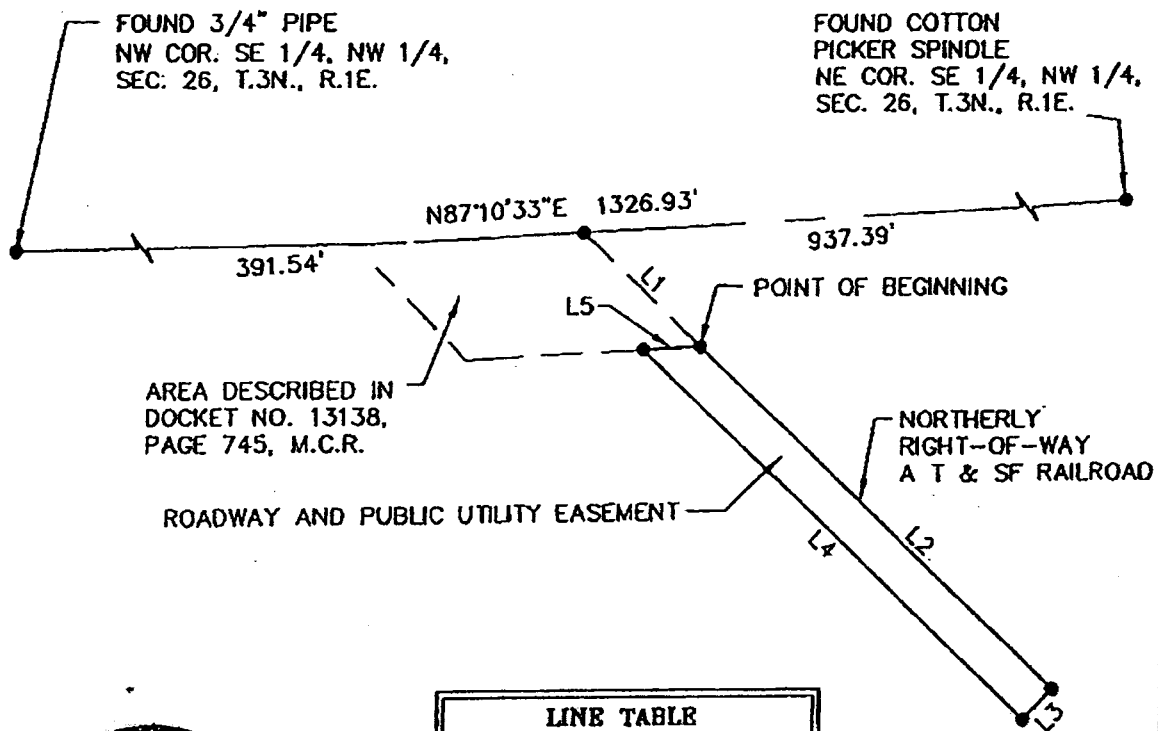
Phone (480) 839-4000 Fax (480) 345-9259

PAGE 2 OF 2 PAGES

PROJECT: PEORIA CENTER STATION

DATE: 03/30/2006

EXHIBIT "A"



LINE TABLE		
LINE NO.	LENGTH	BEARING
L1	50.83'	S46°03'39"E
L2	154.06'	S46°03'39"E
L3	13.00'	S43°56'21"W
L4	166.29'	N46°03'39"W
L5	17.85'	N87°10'50"E



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P.L.S.
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P.L.S.
R.L.S.

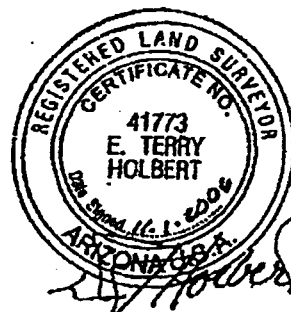
LEGAL DESCRIPTION

A TEMPORARY CONSTRUCTION EASEMENT, 10 FEET WIDE, OVER AND ACROSS A PORTION OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 3 NORTH, RANGE 1 EAST, GILA AND SALT CREEK BASE AND MERIDIAN, STATE OF ARIZONA, COUNTY OF MARICOPA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Commencing at the Northwest Corner of said Northeast Quarter of the Northwest Quarter thence South along the west line thereof SOUTH 01°02'57" EAST 1,105.66 feet to a point on the South Right-of-Way of the AT&SF Railroad; Thence departing said west line and along said South Right-of-Way SOUTH 46°03'39" EAST 167.25 feet to the point of beginning the SOUTHERLY LINE OF SAID TEMPORARY CONSTRUCTION EASEMENT, 10 FEET WIDE:

Thence continuing along said South Right-of-Way, SOUTH 46°03'39" EAST 850.00 feet;
Thence leaving said South Right-of-Way at right angles NORTH 43°55'37" EAST, 10.00 feet to a point 10.00 feet distant and parallel from said south line;
Thence along said parallel line NORTH 46°04'23" WEST 849.21 feet;
Thence leaving said parallel line SOUTH 48°25'19" WEST, 10.03 feet to the point of beginning.

Containing 8,496 square feet or 0.20 acres, more or less.



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L CON PAGE 1 OF 8
08307B

BRADY AULERICH & ASSOCIATES, INC.

1030 E. Guadalupe Road

Tempe, Arizona 85283

Phone (480) 839-4000 Fax (480) 345-9259

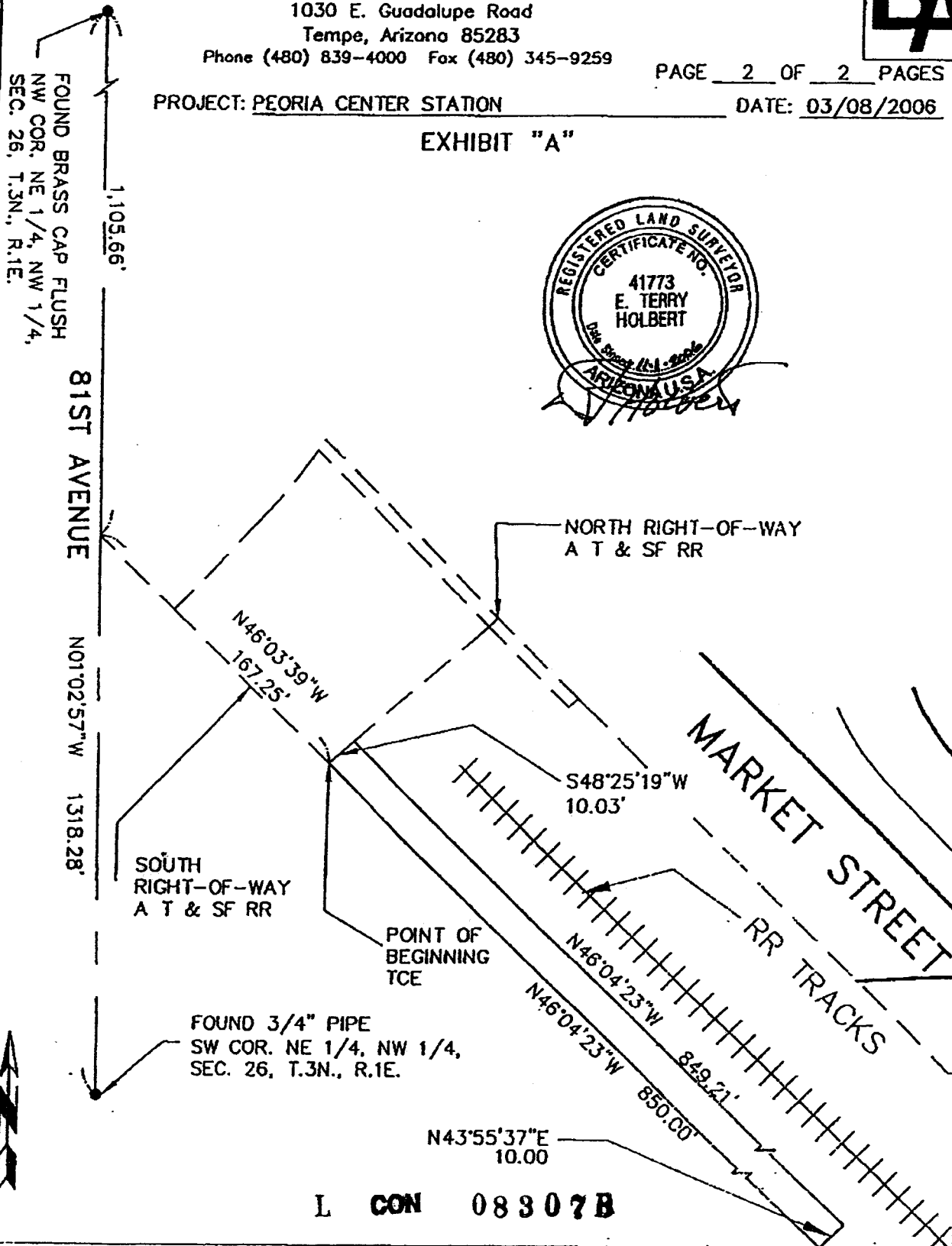


PAGE 2 OF 2 PAGES

PROJECT: PEORIA CENTER STATION

DATE: 03/08/2006

EXHIBIT "A"



**EASEMENT AGREEMENT
FOR PEORIA AVENUE AT GRADE CROSSING**
Attachment to C&M Agreement

THIS EASEMENT AGREEMENT FOR the construction and maintenance of the Cotton Avenue at grade crossing ("Easement Agreement") is made and entered into as of the 29th day of February, 2008, ("Effective Date"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("Grantor"), and the City of Peoria, an Arizona Municipal Corporation ("Grantee").

A. Grantor owns or controls certain real property situated at or near the vicinity of Peoria, County of Maricopa, State of Arizona, at Line Segment 7208, Mile Post 180.0, City Project # 90012, as described or depicted on Exhibit "A" attached hereto and made a part hereof (the "Premises").

B. Grantor and Grantee have entered into that certain Construction and Maintenance Agreement dated as of DECEMBER 10, 2007 concerning improvements on or near the Premises (the "C&M Agreement").

C. Grantee has requested that Grantor grant to Grantee an easement over the Premises for the Easement Purpose (as defined below).

D. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement Agreement.

NOW, THEREFORE, for and in consideration of the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1 Granting of Easement.

1.1 Easement Purpose. The "Easement Purpose" shall be for the purpose of constructing and maintaining an at grade vehicular roadway crossing as set forth in the C&M Agreement. Any improvements to be constructed in connection with the Easement Purpose are referred to herein as "Improvements" and shall be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the C&M Agreement.

1.2 Grant. Subject to the terms and conditions set forth in this Agreement, Grantor agrees to grant to Grantee, and Grantee agrees to purchase and accept from Grantor, for the sum of Sixty One Thousand One Hundred Sixty Four and No/100 Dollars (\$61,164.00), a non-exclusive Permanent easement ("Easement") over the Premises and a Temporary Easement for the Easement Purpose and for no other purpose. The Easement is granted subject to any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of whatsoever nature whether or not of record, if any, relating to the Premises and subject to all with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) and zoning laws (collectively, "Laws"). Grantee may not make any alterations or improvements or perform any maintenance or repair activities within the Premises except in accordance with the terms and conditions of the C&M Agreement.

1.3 Reservations by Grantor. Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:

- (a) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and appurtenances and other facilities or structures of like character (collectively, "Lines") upon, over, under or across the Premises;

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- (b) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; and
- (c) to use the Premises in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Easement Purpose.

Section 2 Term of Easement. The term of the Easement, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual. The term of the Temporary Easement, unless sooner terminated under provisions of this Easement Agreement, shall expire on the date that is one (1) year after the Effective Date or completion of the project, whichever occurs.

Section 3 No Warranty of Any Conditions of the Premises. Grantee acknowledges that Grantor has made no representation whatsoever to Grantee concerning the state or condition of the Premises, or any personal property located thereon, or the nature or extent of Grantor's ownership interest in the Premises. Grantee has not relied on any statement or declaration of Grantor, oral or in writing, as an inducement to entering into this Easement Agreement, other than as set forth herein. GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTOR SHALL NOT BE RESPONSIBLE TO GRANTEE OR ANY OF GRANTEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS EASEMENT AGREEMENT IN THE PREMISES IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTERESTS AND TITLE TO THE PREMISES. Grantee has inspected or will inspect the Premises, and enters upon Grantor's rail corridor and property with knowledge of its physical condition and the danger inherent in Grantor's rail operations on or near the Premises. Grantee acknowledges that this Easement Agreement does not contain any implied warranties that Grantee or Grantee's Contractors (as hereinafter defined) can successfully construct or operate the Improvements.

Section 4 Nature of Grantor's Interest in the Premises. GRANTOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Grantor of the affected rail corridor, Grantor shall not be liable to refund Grantee any compensation paid hereunder.

Section 5 Improvements. Grantee shall take, in a timely manner, all actions necessary and proper to the lawful establishment, construction, operation, and maintenance of the Improvements, including such actions as may be necessary to obtain any required permits, approvals or authorizations from applicable governmental authorities. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the Improvements shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing. In the event any construction, repair, maintenance, work or other use of the Premises by Grantee will affect any Lines, fences, buildings, improvements or other facilities (collectively, "Other Improvements"), Grantee will be responsible at Grantee's sole risk to locate and make any adjustments necessary to such Other Improvements. Grantee must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and obtain the owner's written approval prior to so affecting the Other Improvements. Grantee must

mark all Other Improvements on the Plans and Specifications and mark such Other Improvements in the field in order to verify their locations. Grantee must also use all reasonable methods when working on or near Grantor property to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist. The Grantee agrees to keep the above-described premises free and clear from combustible materials and to cut and remove or cause to be cut and removed at its sole expense all weeds and vegetation on said premises, said work of cutting and removal to be done at such times and with such frequency as to comply with Grantee and local laws and regulations and abate any and all hazard of fire.

Section 6 Taxes and Recording Fees. Grantee shall pay when due any taxes, assessments or other charges (collectively, "Taxes") levied or assessed upon the Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Grantor or the Premises that are attributable to the Improvements. Grantee agrees to purchase, affix and cancel any and all documentary stamps in the amount prescribed by statute, and to pay any and all required transfer taxes, excise taxes and any and all fees incidental to recordation of the Memorandum of Easement. In the event of Grantee's failure to do so, if Grantor shall become obligated to do so, Grantee shall be liable for all costs, expenses and judgments to or against Grantor, including all of Grantor's legal fees and expenses.

Section 7 Environmental.

7.1 Compliance with Environmental Laws. Grantee shall strictly comply with all federal, state and local environmental Laws in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Toxic Substances Control Act (collectively referred to as the "**Environmental Laws**"). Grantee shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Premises. Grantee shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws.

7.2 Notice of Release. Grantee shall give Grantor immediate notice to Grantor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Grantee's use of the Premises. Grantee shall use its best efforts to promptly respond to any release on or from the Premises. Grantee also shall give Grantor immediate notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

7.3 Remediation of Release. In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws which occurred or may occur during the term of this Easement Agreement, Grantor may require Grantee, at Grantee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises. If during the construction or subsequent maintenance of the Improvements, soils or other materials considered to be environmentally contaminated are exposed, Grantee will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an agency having the capacity and authority to make such a determination.

7.4 Preventative Measures. Grantee shall promptly report to Grantor in writing any conditions or activities upon the Premises known to Grantee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Grantee's reporting to Grantor shall not relieve Grantee of any obligation whatsoever imposed on it by this Easement Agreement. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

7.5 Evidence of Compliance. Grantee agrees periodically to furnish Grantor with proof satisfactory to Grantor that Grantee is in compliance with this **Section 7**. Should Grantee not comply fully with the above-stated obligations of this **Section 7**, notwithstanding anything contained in any other provision hereof, Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice of termination upon

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Section 10 Liens. Grantee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Grantee on the Premises or attributable to Taxes that are the responsibility of Grantee pursuant to **Section 6**. Grantor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by Law to prevent the attachment of any such liens to any portion of the Premises; provided, however, that failure of Grantor to take any such action shall not relieve Grantee of any obligation or liability under this **Section 10** or any other section of this Easement Agreement.

Section 11 Tax Exchange. Grantor reserves the right to assign this Easement Agreement to Apex Property & Track Exchange, Inc. ("Apex"). Apex is a qualified intermediary within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, and Treas. Reg. § 1.1031(k)-1(g), for the purpose of completing a tax-deferred exchange under said Section 1031. Grantor shall bear all expenses associated with the use of Apex, or necessary to qualify this transaction as a tax-deferred exchange, and, except as otherwise provided herein, shall protect, reimburse, indemnify and hold harmless Grantee from and against any and all reasonable and necessary additional costs, expenses, including, attorneys fees, and liabilities which Grantee may incur as a result of Grantor's use of Apex or the qualification of this transaction as a tax-deferred transaction pursuant to Section 1031. Grantee shall cooperate with Grantor with respect to this tax-deferred exchange, and upon Grantor's request, shall execute such documents as may be required to effect this tax-deferred exchange.

Section 12 Notices. Any notice required or permitted to be given hereunder by one party to the other shall be delivered in the manner set forth in the C&M Agreement. Notices to Grantor under this Easement shall be delivered to the following address: BNSF Railway Company, Real Estate Department, 2500 Lou Menk Drive, Ft. Worth, TX 76131, Attn: Permits, or such other address as Grantor may from time to time direct by notice to Grantee.

Section 13 Recordation. It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as **Exhibit "B"** (the "Memorandum of Easement") subject to changes required, if any, to conform such form to local recording requirements. The Memorandum of Easement shall be recorded in the real estate records in the county where the Premises are located. If a Memorandum of Easement is not executed by the parties and recorded as described above within 30 days of the Effective Date, Grantor shall have the right to terminate this Easement Agreement upon notice to Grantee.

Section 14 Miscellaneous.

14.1 All questions concerning the interpretation or application of provisions of this Easement Agreement shall be decided according to the substantive Laws of the State of Texas without regard to conflicts of law provisions.

14.2 In the event that Grantee consists of two or more parties, all the covenants and agreements of Grantee herein contained shall be the joint and several covenants and agreements of such parties. This instrument and all of the terms, covenants and provisions hereof shall inure to the benefit of and be binding upon each of the parties hereto and their respective legal representatives, successors and assigns and shall run with and be binding upon the Premises.

14.3 If any action at law or in equity is necessary to enforce or interpret the terms of this Easement Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.

14.4 If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future Laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

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14.5 This Easement Agreement is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Grantee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Grantee or Grantee's obligation to defend and hold Grantor harmless in any prior written agreement between the parties.

14.6 Time is of the essence for the performance of this Easement Agreement.

14.7 The terms of the C&M Agreement are incorporated herein as if fully set forth in this instrument which terms shall be in full force and effect for purposes of this Easement even if the C&M Agreement is, for whatever reason, no longer in effect.

Witness the execution of this Easement Agreement as of the date first set forth above.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By:

Name:

Title:

David P. Schneider
David P. Schneider
General Director - Land Revenue Management

GRANTEE:

CITY OF PEORIA,

An Arizona municipal corporation

By:

Name:

Title:

Terrence L. Ellis
Terrence L. Ellis
City Manager

ATTEST:

Mary Jo Kief
Mary Jo Kief, City Clerk



APPROVED AS TO FORM:

Stephen M. Kemp
Stephen M. Kemp, City Attorney

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Law Department Approved

EXHIBIT "A"

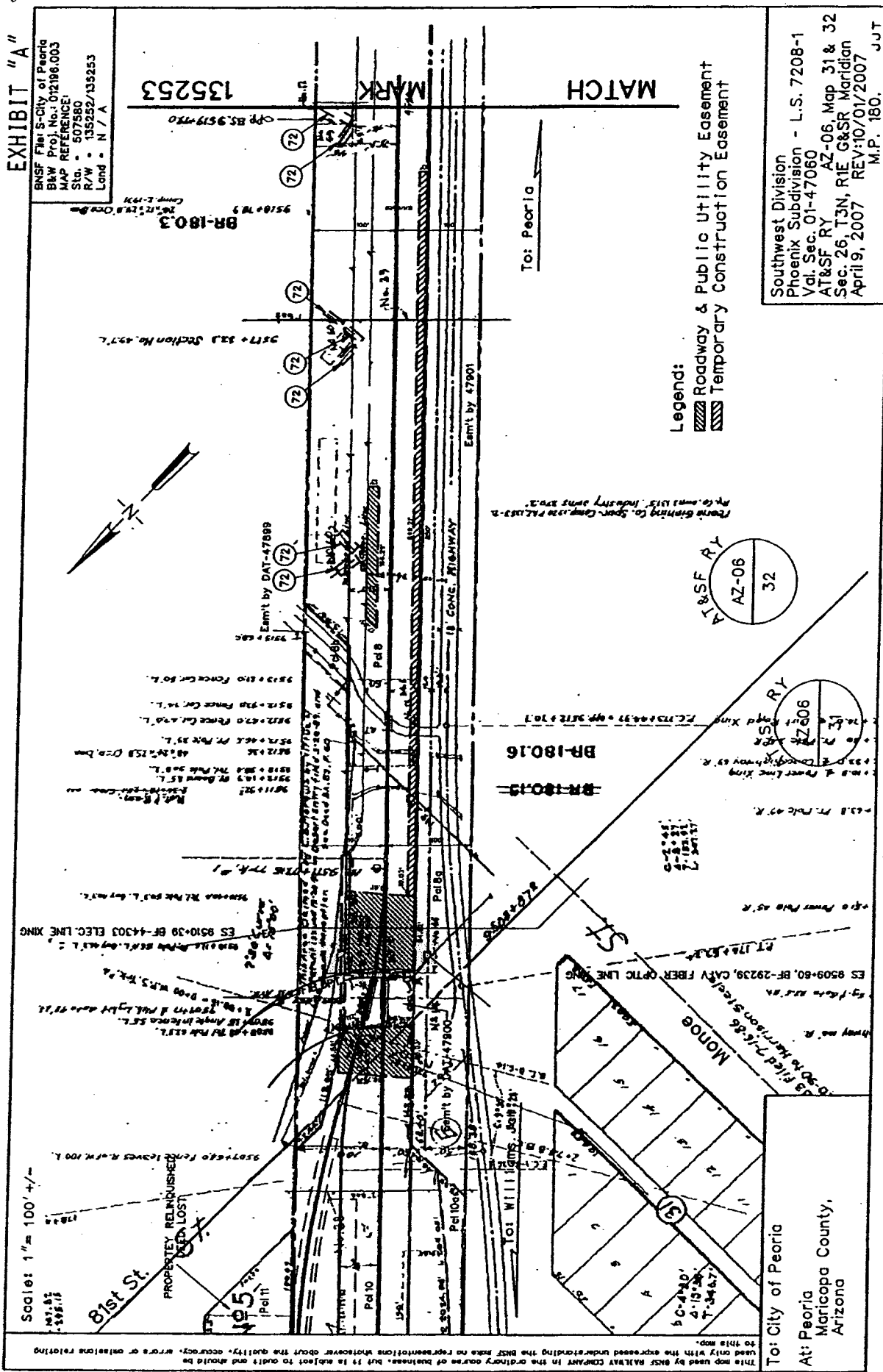
Premises

Exhibit "A"

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EXHIBIT "A"

BNSF Fleet S-City of Peoria
B&W Proj. No.: 012196.003
MAP REFERENCE:
Sta. = 507580
R/W = 135252/135253
Land = N / A



LAW DEPARTMENT APPROVED

EXHIBIT "C" CONTRACTOR REQUIREMENTS

1.01 General

- 1.01.01 The Contractor must cooperate with BNSF RAILWAY COMPANY, hereinafter referred to as "Railway" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of Cotton Crossing.
- 1.01.02 The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1".
- 1.01.03 The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- 1.01.04 The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations.
- 1.01.05 The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.
- 1.01.06 The Contractor must notify the City of Peoria at 623-773-7951 and Railway's Manager Public Projects, telephone number (909) 386-4472 at least thirty (30) calendar days before commencing any work on Railway Property. Contractors notification to Railway, must refer to Railroad's file 025405Y.
- 1.01.07 For any falsework above any tracks or any excavations located, whichever is greater, within twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 1 ½ horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.
- 1.01.08 Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

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- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.contractororientation.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- **1.03.02** The Contractor must notify the Railway's Division Superintendent Larry Kreger at (928) 289-7273 and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
 - 15' Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
 - 25' Horizontally from centerline of nearest track
 - 23'-3 1/2" Vertically above top of rail
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the City of Peoria and must not be undertaken until approved in writing by the Railway, and until the City of Peoria has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.
- **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by City of Peoria for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Private Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be at the expense of the Contractor.

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- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.contractororientation.com, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

1.05 Protection of Railway Facilities and Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's Roadmaster (602) 920-7600 a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger and protective services and devices will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
 - **1.05.02a** When in the opinion of the Railway's Representative it is necessary to safeguard Railway's Property, employees, trains, engines and facilities.
 - **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
 - **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
 - **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
 - **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
- **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.

- **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
- **1.05.03c** The cost of flagger services provided by the Railway, when deemed necessary by the Railway's representative, will be borne by the City of Peoria. The estimated cost for one (1) flagger is \$600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, transportation, meals, lodging and supervision. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. The flagging rate in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of flagging pursuant to this paragraph.
- **1.05.03d** The average train traffic on this route is 13 freight trains per 24-hour period at a timetable speed 25 MPH and 0 passenger trains at a timetable speed of 0 MPH.

1.06 Contractor General Safety Requirements

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.
- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railroad's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.
- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site,

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www.contractororientation.com, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railroad's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**

- **1.06.09** The Contractor must not pile or store any materials, machinery or equipment closer than 25'-0" to the center line of the nearest Railway track. Materials, machinery or equipment must not be stored or left within 250 feet of any highway/rail at-grade crossings, where storage of the same will interfere with the sight distances of motorists approaching the crossing. Prior to beginning work, the Contractor must establish a storage area with concurrence of the Railroad's representative.
- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact BNSF's Field Engineering Representative (505) 767-6826. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.
- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

1.08 Hazardous Waste, Substances and Material Reporting

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- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.

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NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St _____ 2. Date: _____ Time: _____
County: _____ 3. Temperature: _____ 4. Weather _____
(if non-Railway location)
5. Social Security # _____
6. Name (last, first, mi) _____
7. Address: Street: _____ City: _____ St. _____ Zip: _____
8. Date of Birth: _____ and/or Age _____ Gender: _____
(if available)
9. (a) Injury: _____ (b) Body Part: _____
(i.e. (a) Laceration (b) Hand)
11. Description of Accident (To include location, action, result, etc.): _____

12. Treatment:
- ? First Aid Only
 - ? Required Medical Treatment
 - ? Other Medical Treatment

13. Dr. Name _____ 30. Date: _____
14. Dr. Address: _____
Street: _____ City: _____ St: _____ Zip: _____
15. Hospital Name: _____
16. Hospital Address: _____
Street: _____ City: _____ St: _____ Zip: _____
17. Diagnosis: _____

FAX TO
RAILWAY AT (817) 352-7595
AND COPY TO
RAILWAY ROADMASTER FAX

L **CGN** 08307

LAW DEPARTMENT APPROVED

EXHIBIT "C-1"

Agreement
Between
BNSF RAILWAY COMPANY
and the
CONTRACTOR

BNSF RAILWAY COMPANY
Attention: Manager Public Projects

Railway File: _____

Agency Project: _____

Gentlemen:

The undersigned (hereinafter called, the "Contractor"), has entered into a contract (the "Contract") dated _____, 2007, with the City of Peoria for the performance of certain work in connection with the following project: Cotton Crossing. Performance of such work will necessarily require contractor to enter BNSF RAILWAY COMPANY ("Railway") right of way and property ("Railway Property"). The Contract provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for the City of Peoria (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with Railway as follows:

Section 1. RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE BOILER INSPECTION ACT, WHENEVER SO CLAIMED.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the

event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

Section 2. TERM

This Agreement is effective from the date of the Contract until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

Section 3. INSURANCE

Contractor must, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance must contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- ♦ Bodily Injury and Property Damage
- ♦ Personal Injury and Advertising Injury
- ♦ Fire legal liability
- ♦ Products and completed operations

This policy must also contain the following endorsements, which must be indicated on the certificate of insurance:

- ♦ It is agreed that any workers' compensation exclusion does not apply to *Railroad* payments related to the Federal Employers Liability Act or a *Railroad* Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law.
- ♦ The definition of insured contract must be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ♦ Any exclusions related to the explosion, collapse and underground hazards must be removed.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy.

B. Business Automobile Insurance. This insurance must contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ♦ Bodily injury and property damage
- ♦ Any and all vehicles owned, used or hired

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ♦ Arizona's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ♦ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

D. Railroad Protective Liability insurance naming only the *Railroad* as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 10 93 and include the following:

L CON 083074

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the *Railroad* prior to performing any work or services under this Agreement

Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against *Railroad* for all claims and suits against *Railroad*. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against *Railroad* for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against *Railroad* for loss of its owned or leased property or property under contractor's care, custody or control.

Contractor's insurance policies through policy endorsement, must include wording which states that the policy is primary and non-contributing with respect to any insurance carried by *Railroad*. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) must include a severability of interest endorsement and *Railroad* must be named as an additional insured with respect to work performed under this agreement. Severability of interest and naming *Railroad* as additional insured must be indicated on the certificate of insurance.

Contractor is not allowed to self-insure without the prior written consent of *Railroad*. If granted by *Railroad*, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by contractor in lieu of insurance. Any and all *Railroad* liabilities that would otherwise, in accordance with the provisions of this *Agreement*, be covered by contractor's insurance will be covered as if contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, contractor must furnish to *Railroad* an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify *Railroad* in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from *Railroad*, a certified duplicate original of any required policy must be furnished. Contractor should send the certificate(s) to the following address:

BNSF RISK MANAGEMENT
2500 Lou Menk Drive AOB-1
Fort Worth, TX 76131-2828
Fax: 817-352-7207

Any insurance policy must be written by a reputable insurance company acceptable to *Railroad* or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provide.

Contractor represents that this *Agreement* has been thoroughly reviewed by contractor's insurance agent(s)/broker(s), who have been instructed by contractor to procure the insurance coverage required by this *Agreement*. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, *Railroad* may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by contractor, contractor must require that the subcontractor provide and

L CON 083077

maintain the insurance coverages set forth herein, naming *Railroad* as an additional insured, and requiring that the subcontractor release, defend and indemnify *Railroad* to the same extent and under the same terms and conditions as contractor is required to release, defend and indemnify *Railroad* herein.

Failure to provide evidence as required by this section will entitle, but not require, *Railroad* to terminate this *Agreement* immediately. Acceptance of a certificate that does not comply with this section will not operate as a waiver of contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by contractor will not be deemed to release or diminish the liability of contractor including, without limitation, liability under the indemnity provisions of this *Agreement*. Damages recoverable by *Railroad* will not be limited by the amount of the required insurance coverage.

For purposes of this section, *Railroad* means "Burlington Northern Santa Fe Corporation", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

Section 4. EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Contract, and the Contractor Requirements set forth on Exhibit "C" attached to the Contract and this Agreement, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

Section 5. TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay for certain trains may be as high as \$50,000.00 per incident.

Contractor and its subcontractors must give Railway's representative (four) 4 weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

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Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

(Contractor)

BNSF Railway Company

By: _____
Printed Name: _____
Title: _____

By: _____
Name: _____
Manager Public Projects

Contact Person: _____
Address: _____

Accepted and effective this _____ day of 2007.

City: _____ State: _____ Zip: _____
Fax: _____
Phone: _____
E-mail: _____

CON 08307

Exhibit "D" – Cost Summary

<u>Cost Item</u>	<u>Cost</u>
Track 1 Rebuilding	\$ 213,963
Track 2 Rebuilding	\$ 156,331
Turnout Relocation	\$ 526,241
Signal Installation	\$ 709,704

<u>TOTAL</u>	\$ 1,606,239
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L CON 08307

Exhibit "D" - Track 1 Rebuilding

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

THE B. N. S. P. RAILWAY COMPANY
FHPM ESTIMATE FOR
CITY OF PEORIA

LOCATION:- PEORIA TO MAIN TRACK DETAILS OF ESTIMATE PLAN ITEM: 000115483 VERSION: 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

DESCRIPTION OF PROJECT AS PROVIDED BY PROJECT ENGINEER DTD
COMPLETE RECONSTRUCT AND EXTENSION OF DOT 025405Y 81ST AVE. PEORIA, AZ CROSSING OF MAIN
TRACK

LS 7208 - MP 180.2 - PHOENIX SUBDIVISION - SOUTHWEST WEST DIVISION

PHOENIX SUBDIVISION - SOUTHWEST WEST DIVISION

RDM AREND - DE HEIDZIG

BILLING FOR THIS PROJECT SHOULD BE DIRECTED TO:

100% BILLABLE TO CITY OF PEORIA, AZ

MAINTAIN PROPRIETARY CONFIDENTIALITY

THE PHYSICAL LIMITS OF THIS PROJECT ARE DESCRIBED BY LINE SEGMENT, MILE POST RANGES, AND
IN SOME CASES TRACK NUMBER. THIS IS THE PRIMARY AREA FOR THE PROJECT. THERE WILL BE CASES
WHERE WORK MAY OCCUR BEYOND THE DEFINED LIMITS.

PROJECTS THAT INCLUDE SIGNAL, ELECTRICAL, OR TELECOMMUNICATION EQUIPMENT MAY REQUIRE
ACTIVITY BEYOND THESE DEFINED TRACK LIMITS. ALL OR PORTIONS OF SOME PROJECTS MAY OCCUR IN
AREAS WHERE NO MILEPOST SIGNS EXIST SUCH AS YARDS.

THIS ESTIMATE IS GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST
FOR LABOR, MATERIAL, AND OVERHEAD.

DESCRIPTION	QUANTITY	U/M	COST	TOTAL \$

LABOR				

FLAGGING - PUBLIC CROSSING - OPER	800.00	MH	16,729	
PLACE FIELD WELDS - CAP	112.00	MH	2,364	
REPLACE PUBLIC CROSSING - TOTAL REHAB	336.00	MH	6,503	
REPLACE SIGNAL BONDING - CAP	56.00	MH	1,266	
SURFACE TRACK - REPLACEMENT - CAP	24.00	MH	503	
UNLOAD BALLAST - REPLACEMENT - CAP	18.00	MH	349	
UNLOAD CROSSING MATERIAL - PUBLIC - CAP	84.00	MH	1,626	
WORK TRAIN - BALLAST	36.00	MH	1,359	
PAYROLL ASSOCIATED COSTS			22,480	
EQUIPMENT EXPENSES			16,417	
DA LABOR OVERHEADS			30,794	
PERDIEM EXPENSES			150	
INSURANCE EXPENSES			4,832	
TOTAL LABOR COST			105,372	105,372

MATERIAL				

*BALLAST, FROM PEDERNAL, NM. (COLORA	300.00	NT **	1,788	
TRK PANEL, 136#- 60 FT-10 FT TIES-OTM/PANDROL	6.00	EA **	41,400	
WELDKIT, GENERIC FOR ALL RAIL WEIGHTS	14.00	KT	742	
CONC 136 08-SEC WITH FILLER FOR WOOD	168.00	FT	26,040	
CONCRETE KING RAMP AND PANEL RESTRAINT, COMPL	1.00	ST	192	
SIGNAL MATERIAL	7.00	DAY	1,050	
MATERIAL HANDLING			3,559	
ONLINE TRANSPORTATION			2,775	
USE TAX			4,770	
OFFLINE TRANSPORTATION			873	
TOTAL MATERIAL COST			83,189	83,189

OTHER				

LEASED EQUIPMENT WITH OPERATOR	7.00	DAY	10,500	
TOTAL OTHER ITEMS COST			10,500	10,500
PROJECT SUBTOTAL				199,061
CONTINGENCIES				13,837
BILL PREPARATION FEE				4,050

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GROSS PROJECT COST

213,963

LESS COST PAID BY BNSF

0

TOTAL BILLABLE COST

213,963

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Exhibit "D" - Track 2 Rebuilding

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

THE B. N. S. F. RAILWAY COMPANY
FHPM ESTIMATE FOR
CITY OF PEORIA

LOCATION:- PEORIA TO TEAM DETAILS OF ESTIMATE PLAN ITEM: 000115488 VERSION: 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

DESCRIPTION OF PROJECT AS PROVIDED BY PROJECT ENGINEER DTD
COMPLETE RECONSTRUCT AND EXTENSION OF DOT 025405Y 81ST AVE. PEORIA, AZ
LS 7208 - MP 180.2 - PHOENIX SUBDIVISION - SOUTHWEST WEST DIVISION
PHOENIX SUBDIVISION - SOUTHWEST WEST DIVISION
RDM AREND - DE HEIDZIG
BILLING FOR THIS PROJECT SHOULD BE DIRECTED TO:
100% BILLABLE TO CITY OF PEORIA, AZ

MAINTAIN PROPRIETARY CONFIDENTIALITY

THE PHYSICAL LIMITS OF THIS PROJECT ARE DESCRIBED BY LINE SEGMENT, MILE POST RANGES, AND IN SOME CASES TRACK NUMBER. THIS IS THE PRIMARY AREA FOR THE PROJECT. THERE WILL BE CASES WHERE WORK MAY OCCUR BEYOND THE DEFINED LIMITS.
PROJECTS THAT INCLUDE SIGNAL, ELECTRICAL, OR TELECOMMUNICATION EQUIPMENT MAY REQUIRE ACTIVITY BEYOND THESE DEFINED TRACK LIMITS. ALL OR PORTIONS OF SOME PROJECTS MAY OCCUR IN AREAS WHERE NO MILEPOST SIGNS EXIST SUCH AS YARDS.
THIS ESTIMATE IS GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND OVERHEAD.

DESCRIPTION	QUANTITY	U/M	COST	TOTAL \$

LABOR				

PLACE FIELD WELDS - CAP	112.00	MH	2,364	
REPLACE PUBLIC CROSSING - TOTAL REHAB	336.00	MH	6,503	
REPLACE SIGNAL BONDING - CAP	56.00	MH	1,266	
SURFACE TRACK - REPLACEMENT - CAP	24.00	MH	503	
UNLOAD BALLAST - REPLACEMENT - CAP	18.00	MH	349	
UNLOAD CROSSING MATERIAL - PUBLIC - CAP	84.00	MH	1,626	
WORK TRAIN - BALLAST	36.00	MH	1,359	
PAYROLL ASSOCIATED COSTS			10,228	
EQUIPMENT EXPENSES			7,469	
DA LABOR OVERHEADS			14,012	
PERDIEM EXPENSES			150	
INSURANCE EXPENSES			2,198	
TOTAL LABOR COST			48,027	48,027

MATERIAL				

BALLAST, FROM PEDERNAL, NM. (COLORADO)	300.00	NT **	1,788	
* TRK PANEL, 136# - 60 FT-10 FT TIES-OTM/PANDROL	6.00	EA **	41,400	
WELDKIT, GENERIC FOR ALL RAIL WEIGHTS	14.00	KT	742	
CONC 136 08-SEC WITH FILLER FOR WOOD	168.00	FT	26,040	
CONCRETE KING RAMP AND PANEL RESTRAINT, COMPL	1.00	ST	192	
SIGNAL MATERIAL	7.00	DAY	1,050	
MATERIAL HANDLING			3,559	
ONLINE TRANSPORTATION			2,775	
USE TAX			4,770	
OFFLINE TRANSPORTATION			873	
TOTAL MATERIAL COST			83,189	83,189

OTHER				

LEASED EQUIPMENT WITH OPERATOR	7.00	DAY	10,500	
TOTAL OTHER ITEMS COST			10,500	10,500
PROJECT SUBTOTAL				141,716
CONTINGENCIES				13,837
BILL PREPARATION FEE				778

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GROSS PROJECT COST
LESS COST PAID BY BNSF

156,331
0

1

TOTAL BILLABLE COST

156,331
=====

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Exhibit "D" - Turnout Relocation

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

THE B. N. S. F. RAILWAY COMPANY
PHPM ESTIMATE FOR
CITY OF PEORIA, AZ

LOCATION:- PEORIA DETAILS OF ESTIMATE PLAN ITEM: 000115490 VERSION: 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

CITY PROJECT WILL REALIGN 81ST AVE. REQUIRES REBUILD AND EXTENSION OF 81ST AVE CROSSINGS OF MAIN AND TEAM TRACKS - COVERED BY SEPARATE CROSSING ESTIMATES.
THIS ESTIMATE COVERS OTHER TRACK WORK ON MAIN, TEAM AND SPUR TRACKS AFFECTED BY ROAD REALIGNMENT
LS 7208 - BETWEEN MP 180 - MP 180.4
PHOENIX SUBDIVISION
SOUTHWEST WEST DIVISION
RDM AREND - DE HEIDZIG
100% BILLABLE TO CITY OF PEORIA, AZ
*** DUMP FEES @ \$15,000

DESCRIPTION	QUANTITY	U/M	COST	TOTAL \$

LABOR				

LABOR - PROTECTION / INSPECTION	20.00	MH	434	
PICKUP TURNOUT - REPLACED	195.11	MH	3,951	
PLACE FIELD WELDS - CAP	348.80	MH	7,508	
PLACE FIELD WELDS - CAP	69.76	MH	1,502	
REMOVE TURNOUT(S)	96.00	MH	1,858	
REPLACE SIGNAL BONDING - CAP	35.52	MH	843	
REPLACE TRACK PANELS - CAP	228.80	MH	4,663	
REPLACE TURNOUT(S) - CAP	261.60	MH	5,341	
UNLOAD BALLAST - REPLACEMENT - CAP	87.20	MH	1,789	
UNLOAD TRACK PANELS - REPLACEMENT	114.40	MH	2,332	
UNLOAD TURNOUT - REPLACEMENT - CAP	43.60	MH	885	
WORK TRAIN - BALLAST - REPLACEMENT - CAP	36.00	MH	1,359	
WORK TRAIN - TRACK PANELS - REPLACEMENT	115.20	MH	4,347	
WORK TRAIN - UNLOAD TURNOUT	36.00	MH	1,359	
PAYROLL ASSOCIATED COSTS			27,949	
EQUIPMENT EXPENSES			20,410	
DA LABOR OVERHEADS			38,285	
PERDIEM EXPENSES			4,056	
INSURANCE EXPENSES			6,006	
TOTAL LABOR COST			134,877	134,877

MATERIAL				

BALLAST, FROM PEDERNAL, NM. [COLORA	1160.00	NT **	6,914	
DERAIL, DOUBLE PT, 136# LH, PANELIZED #9	1.00	EA	15,505	
WORK TRAIN FUEL - BALLAST	900.00	GAL	1,422	
WORK TRAIN FUEL - OTHER TRACK MATERIAL	900.00	GAL	1,422	
WORK TRAIN FUEL - TRACK PANELS	2880.00	GAL	4,551	
JOINT, COMPROMISE, 115# TO 100#, NP, RH, 3L &	4.00	PR **	788	
TRACK PANEL, 136 LB 39 FT REG PLTS 10FT TIES	26.00	EA	111,632	
RAIL, TRANSN, LH, 25 FT, 136-1/4 WORN 115	2.00	EA	2,171	
RAIL, TRANSN, RH, 25 FT, 136-1/4 WORN 115	2.00	EA	2,171	
RAIL, TRANSN, BE, 40 FT, 136 - 1/4 WORN 132	4.00	EA	3,851	
ROD, CONNECTING, W/SOULDER BOLT 6 FT	3.00	EA **	415	
SIGN, DERAIL	1.00	EA	11	
STD, SWITCH, HI, W/TRI HND, TARGET, * NO CONN	3.00	EA **	2,831	
TIE, SWITCH, TREATED, HARDWOOD 10 FT	40.00	EA	2,251	
TIE, HEAD BLK, 14' TREATED, HARDWOOD	2.00	EA	364	
TURNOUT, 136-09 RH MANUAL RBM FROG 16.6 PT:	1.00	EA **	49,727	
TURNOUT, 136-11 RH MANUAL RBM FROG 19.6 PT:	1.00	EA **	57,591	
WELDKIT, GENERIC FOR ALL RAIL WEIGHTS	96.00	KT	5,088	
SIGNAL MATERIAL	2.00	DAY	1,000	
MATERIAL HANDLING			13,108	
ONLINE TRANSPORTATION			10,823	
USE TAX			18,070	
OFFLINE TRANSPORTATION			1,764	

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*****		TOTAL MATERIAL COST	313,470	313,470
OTHER				

DUMP FEES	1.00 LS		15,000	
FRONT END LOADER RENTAL (UNLOAD/REPLACE TURNO	1.00 LS		15,000	
SIGNAL LEASED VEHICLE	2.00 DAY		100	
TOTAL OTHER ITEMS COST		30,100	30,100	
PROJECT SUBTOTAL			478,447	
CONTINGENCIES			45,175	
BILL PREPARATION FEE			2,619	
GROSS PROJECT COST			526,241	
LESS COST PAID BY BNSF			0	
TOTAL BILLABLE COST			526,241	

L CON 08307

Exhibit "D" - Signal

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

THE B. N. S. F. RAILWAY COMPANY
FHPM ESTIMATE FOR
ARIZONA

LOCATION:- PEORIA TO MP 181.2 DETAILS OF ESTIMATE PLAN ITEM: PSI025405Y VERSION: 1

PURPOSE, JUSTIFICATION AND DESCRIPTION

INSTALL CONSTANT WARNING, 5 FLASHERS W/GATES, 2 FLASHERS, 1 CANTILEVER, 1 SIGNAL BRIDGE, AND UPGRADE CIRCUITRY AT 83RD AVE AT COTTON AVE., PEORIA, AZ. SOUTHWEST DIV., PHOENIX SUBDIV., MP 180.1, LS 7208, DOT # 025405Y.

MONTHLY POWER UTILITY COST CENTER:

THE MATERIAL LIST BELOW REFLECTS TYPICAL REPRESENTATIVE PACKAGES USED FOR ESTIMATING PURPOSE ONLY.

THEY CAN BE EXPECTED TO CHANGE AFTER THE ENGINEERING PROCESS. DETAILED AND ACCURATE MATERIAL LISTS WILL BE FURNISHED WHEN ENGINEERING IS COMPLETED. CONTINUING CONTRACTS HAVE BEEN ESTABLISHED FOR PORTIONS OF SIGNAL WORK ON THE BNSF RAILROAD.

THIS ESTIMATE IS GOOD FOR 90 DAYS. THEREAFTER THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND OVERHEAD.

***** SIGNAL WORK ONLY *****

THE STATE OF ARIZONA IS FUNDING THIS PROJECT 100%.

MAINTAIN PROPRIETARY CONFIDENTIALITY

DESCRIPTION	QUANTITY	U/M	COST	TOTAL \$

LABOR				

PLACE FIELD WELDS - CAP	140.80	MH	3.107	
PLACE RAIL/OTM - CAP	69.76	MH	1.416	
SIGNAL FIELD LABOR - CAP	2360.00	MH	51.496	
SIGNAL SHOP LABOR - CAP	200.00	MH	4.520	
PAYROLL ASSOCIATED COSTS			44.337	
EQUIPMENT EXPENSES			16.005	
DA LABOR OVERHEADS			60.730	
INSURANCE EXPENSES			9.533	
TOTAL LABOR COST			191.144	191.144

MATERIAL				

PLUG RAIL, GENERIC, INSULATED, BONDED, 40 FT. FOR	4.00	EA	4.548	
RAIL, GENERIC, FOR SIGNAL PROJECTS	160.00	LF	2.744	
WELD KIT, GENERIC FOR ALL RAIL WEIGHTS	16.00	KT	848	
2 TK SIGNS	8.00	EA N	528	
83 RD AVE.	1.00	EA N	36.160	
94' SIGNAL BRIDGE	1.00	LS N	104.904	
BATTERY	2.00	LS N	15.088	
BONDING MATERIAL	1.00	EA N	2.000	
BUNGALOW 6X6	2.00	EA N	17.224	
BUNGALOW MATERIAL	2.00	LS N	10.492	
CABLE	1.00	LS N	22.766	
CANTILEVER COMPLETE	1.00	EA N	18.695	
CHARGERS	2.00	LS N	2.550	
CONDUIT, PVC 4", SCH 80	300.00	FT N	1.170	
FIELD MATERIAL	2.00	LS N	10.710	
FOUNDATION	7.00	EA N	3.395	
GATE ARM W/ LED LIGHTS	5.00	EA N	2.240	
GATE KEEPER	5.00	EA N	8.875	
GATE MECH. SAFETRAN S-60	5.00	EA N	30.000	
GCP4000	1.00	EA N	18.619	

L CON 083077

ILOD	9.00	EA	N	3.807
INTERFACE BOX, TRAFFIC PREEMPT	1.00	EA	N	258
ISLAND AFTAC	1.00	EA	N	10,384
LED LIGHT, 12" RETRO-FIT	42.00	EA	N	9,408
MATERIAL FOR ELECTRICAL	1.00	EA	N	1,500
PRECAST FOUNDATIONS	3.00	EA	N	10,800
PREEMPTION	1.00	EA	N	2,500
RTU-6 CELLULAR MONITOR	1.00	EA	N	2,200
SEAR II, I/O MODULE	2.00	EA	N	2,414
SEAR-II, RECORDER	1.00	EA	N	2,289
SHUNT, NBS	4.00	EA	N	2,116
SIDELIGHTS COMPLETE	1.00	EA	N	1,250
SSCC-IV SOLID STATE CONTROLLER	4.00	EA	N	23,596
TK CIRCUIT	1.00	EA	N	1,500
MATERIAL HANDLING				406
ONLINE TRANSPORTATION				56
USE TAX				25,961
OFFLINE TRANSPORTATION				4,831

TOTAL MATERIAL COST

418,832 418,832

OTHER

AC POWER SERVICE	1.00	EA	N	5,000
CONCRETE	1.00	EA	N	11,000
CONTRACT ENGINEERING	1.00	LS	N	10,000
CONTRACT SIGNS AND CONES	1.00	LS	N	5,000
FILL DIRT	10.00	CY	N	250
SURFACE ROCK	30.00	CY	N	750

TOTAL OTHER ITEMS COST

32,000 32,000

PROJECT SUBTOTAL
CONTINGENCIES
BILL PREPARATION FEE

641,976
64,197
3,531

GROSS PROJECT COST
LESS COST PAID BY BNSF

709,704
0

TOTAL BILLABLE COST

709,704

L CON 08307

B

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Melvin Thomas
Burlington Northern Santa Fe RR
740 E. Carnegie Dr.
San Bernardino, CA 92408

2. Article Number

(Transfer from service label)

7006 0810 0003 9266 8811

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

S. BORTOLINI 4-14-08

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

APR 17 2008

3. Service Type

☐ Certified Mail ☐ Express Mail

☐ Registered ☐ Return Receipt for Merchandise

☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Dani Ziem, Sr. Design Manager
Wal-Mart Stores, Inc. (Store #1533-03)
2001 S. E. 10th St.
Bentonville, AR 72716-0550

2. Article Number

(Transfer from service label)

7006 0810 0003 9266 8729

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

Jim Smith

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

APR 16 2008

APR 17 2008

3. Service Type

☐ Certified Mail ☐ Express Mail

☐ Registered ☐ Return Receipt for Merchandise

☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Joshua Rogers, Property Mgr - AZ
Wal-Mart Stores, Inc. (Store #1533-03)
2001 S. E. 10th St.
Bentonville, AR 72716-0550

2. Article Number

(Transfer from service label)

7006 0810 0003 9266 8736

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

Jim Smith

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

APR 11 2008

3. Service Type

☐ Certified Mail ☐ Express Mail

☐ Registered ☐ Return Receipt for Merchandise

☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
 - Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

APR 11 2008

Barry Young, Construction Manager
Wal-Mart Stores, Inc. (Store #1533-03)
2001 S. E. 10th St.
Bentonville, AR 72716-0550

2. Article Number

(Transfer from service label)

7002 0860 0004 2042 6627

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-15

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by (Printed Name)

D. Is delivery address different from item 1?

If YES, enter delivery address below:

☐ Agent
☐ Addressee

C. Date of Delivery

☐ Yes☐ No

3. Service Type

☐ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
 - Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Claudia Gantert
Southwest Gas
9 S. 43rd Ave, MC 420-586
Phoenix, AZ 85009

2. Article Number

(Transfer from service label)

7006 0810 0003 9266 8743

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by (Printed Name)

D. Is delivery address different from item 1?

If YES, enter delivery address below:

☐ Agent
☐ Addressee

C. Date of Delivery

☐ Yes☐ No

3. Service Type

☐ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
 - Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Ron Pint
Cox Communications
1550 W. Deer Valley Road
Phoenix, AZ 85027

2. Article Number

(Transfer from service label)

7006 0810 0003 9266 8781

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by (Printed Name)

D. Is delivery address different from item 1?

If YES, enter delivery address below:

☒ Agent
☐ Addressee

C. Date of Delivery

☐ Yes☐ No

3. Service Type

☐ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
 - Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Hector Buenrostro
Salt River Project
221 N. 79th Ave.
Tolleson, AZ 85043

2. Article Number

(Transfer from service label)

7006 0810 0003 9266 8767

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

Signature

x *Ron Jones*

☐ Agent
☐ Addressee

B. Received by (Printed Name)

Ron Jones

C. Date of Delivery

4/15

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

APR 15 2006

3. Service Type

☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
 - Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Jay R. Schneider
Wal-Mart Stores, Inc. (Store #1533-03)
Frontera Development, Inc.
6263 N. Scottsdale Rd., Suite 160
Scottsdale, AZ 85250

2. Article Number

(Transfer from service label)

7002 0860 0004 2042 6610

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

x *J. Palmer*

☐ Agent
☐ Addressee

B. Received by (Printed Name)

J. Palmer

C. Date of Delivery

4-10

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

APR 10

3. Service Type

☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
 - Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Tony Belford
Southwest Fibernet
2920 W. Directors Row
Salt Lake City, UT 84104

2. Article Number

(Transfer from service label)

7006 0810 0003 9266 8750

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

x *Kristina Ito*

☐ Agent
☐ Addressee

B. Received by (Printed Name)

Kristina Ito

C. Date of Delivery

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

APR 15 2006

3. Service Type

☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
 - Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Robert Travis
Arizona Dept of Transportation
205 S. 17th Ave., MD 618E
Phoenix, AZ 85007

2. Article Number

(Transfer from service label)

7006 0810 0003 9266 8804

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

Signature

X *Larry Sanchez*
B. Received by (Printed Name)
Larry Sanchez☐ Agent☐ Addressee

C. Date of Delivery

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

APR 10 2008

3. Service Type

☐ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
 - Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Matt Robbins
Scott Communities
2151 E. Broadway Rd, #210
Tempe, AZ 85282

2. Article Number

(Transfer from service label)

7006 0810 0003 9266 8828

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*
B. Received by (Printed Name)
KR☐ Agent☐ Addressee

C. Date of Delivery

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

APR 10 2008

3. Service Type

☐ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
 - Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Bobby Garza
Arizona Public Service
P.O. Box 53999, MS 3876
Phoenix, AZ 85072

2. Article Number

(Transfer from service label)

7006 0810 0003 9266 8798

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*
B. Received by (Printed Name)
BZG/ADST☐ Agent☐ Addressee

C. Date of Delivery

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

APR 10 2008

3. Service Type

☐ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

SENDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.

- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

John Settembre
Qwest Communications
135 W. Orion Street
Tempe, AZ 85283

2. Article Number

(Transfer from service label)

7006 0810 0003 9266 8774

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-154

COMPLETE THIS SECTION ON DELIVERY

Signature

[Signature]
B. Received by (Printed Name) *[Signature]*

- ☐ Agent
☐ Addressee

C. Date of Delivery

4/10/08

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

APR 11 2008

3. Service Type

- ☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Robert Russell, OSP Engineer
Integra Telecom
3540 E. Baseline Rd. #100
Phoenix, AZ 85042

2. Article Number

(Transfer from service label)

7002 0860 0004 2042 6597

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-154

COMPLETE THIS SECTION ON DELIVERY

A. Signature

[Signature]
B. Received by (Printed Name) *[Signature]*

- ☐ Agent
☐ Addressee

C. Date of Delivery

4/9/08

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

APR 11 2008

3. Service Type

- ☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

Pueblo Publishers, Inc7122 North 59th Avenue
Glendale, AZ 85301**INVOICE**

Invoice Number: 116441

Invoice Date: Apr 17, 2008

Page: 1

Voice: (623) 842-6000

Fax: (623) 842-6017

Bill To:CITY OF PEORIA - CITY CLERK'S
OFFICE - NATALIE GILSTRAP
8401 W. MONROE ST.
PEORIA, AZ 85345**Ship to:****Customer ID**

156

Customer PO**Payment Terms**

Net 30 Days

Sales Rep ID

LGL

Shipping Method

Courier

Ship Date**Due Date**

5/17/08

Quantity

7.00 PT

Item**Description**PUBLIC NOTICE: HEARING COTTON
CROSSING / CITY CLERK**Unit Price**

1.50

Amount

10.50

Subtotal

10.50

Sales Tax

0.19

Total Invoice Amount

10.69

Payment/Credit Applied

TOTAL**10.69**

Check/Credit Memo No:

RECEIVED
2008 APR 23 AM 9 27
CITY CLERK

AFFIDAVIT OF PUBLICATION

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

I, Carolyn Castillo of
PEORIA TIMES

A newspaper of general circulation
published and printed in the city of
Glendale, County of Maricopa, State of
Arizona, do solemnly swear that a copy of
the notice, in the matter of

NOTICE OF HEARING

81st-Cotton Crossing

City of Peoria

As per clipping attached, was published
weekly in the regular and entire edition
of the said newspaper, and not in any
supplement hereof, for a period of 1
consecutive week(s), as follows, to-wit:
04/18/08

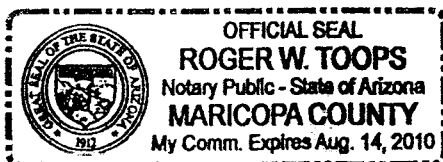
RECEIVED
2008 APR 23 AM 9 27
CITY CLERK

(s) *Carolyn Castillo*

Subscribed and sworn to before me, this
18th day of April (year) 2008.

(s) *[Signature]*
Notary Public

My commission expires:



SCANNED

PO Box 2133
Peoria, AZ 85380
Publish Peoria Times
April 4, 11 and 18, 2008

**ARTICLES OF ORGANIZATION HAVE
BEEN FILED IN THE OFFICE OF THE
ARIZONA CORPORATION
COMMISSION FOR**

Name: **HANDY DAN'S REMODELING &
REPAIR, LLC.**

The address of the known place of business is:
9413 W. Charleston Ave.
Peoria, AZ 85382
The name and address of the Statutory Agent is:
Dan Voltz
9143 W. Charleston Ave.
Peoria, AZ 85382

Management of the limited liability company is
reserved to the members. The names and
addresses of each person who is a member are:
Dan Voltz, member
Debbie Voltz, member
9143 W. Charleston Ave.
Peoria, AZ 85382
Publish Peoria Times
April 4, 11 and 18, 2008

**ARTICLES OF ORGANIZATION HAVE
BEEN FILED IN THE OFFICE OF THE
ARIZONA CORPORATION
COMMISSION FOR**

Name: **INSPIRATIONAL WAYS, LLC.**

The address of the known place of business is:
137 E. Dobbins Rd.
Phoenix, AZ 85042
The name and address of the Statutory Agent is:
Sydell Miller
6250 N. 19th Ave. #242
Phoenix, AZ 85042

Management of the limited liability company is
reserved to the members. The names and
addresses of each person who is a member are:
Kelly Brannan, member
137 E. Dobbins Rd.
Phoenix, AZ 85042
Publish Peoria Times
April 4, 11 and 18, 2008

**ARTICLES OF ORGANIZATION HAVE
BEEN FILED IN THE OFFICE OF THE
ARIZONA CORPORATION
COMMISSION FOR**

Name: **CHRISTINE CLEANING SERVICE,
LLC.**

The address of the known place of business is:
14858 W. Cortez St.
Surprise, AZ 85379-5227
The name and address of the Statutory Agent is:
Krustyna Maznio
14858 W. Cortez St.
Surprise, AZ 85379-5227

Management of the limited liability company is
vested in a manager. The names and addresses
of each person who is a manager and each
member who owns a twenty percent or greater
interest in the capital or profits of the limited
liability company are:
Krustyna Maznio, member/manager
14858 W. Cortez St.
Surprise, AZ 85379-5227
Publish Peoria Times
April 4, 11 and 18, 2008

approval of the dissolution. The number of
votes cast for approval of the dissolution was
sufficient for approval by the voting group.
DATED this 18th day of February, 2008.
(s) Donnie L. ... all, President
Publish Peoria Times
April 18, 25 and May 2, 2008

**NOTICE
OF BID**

NOTICE OF BID

Pre-Bid/Site Inspection Meeting: April 22,
2008 Bid Opening: May 2, 2008.

NOTICE IS HEREBY GIVEN that sealed bids
for CSA/Los Vecinos will be received until 9:00
A.M. May 2, 2008 at the offices of CSA/Los
Vecinos 6704 N. 59th Avenue, Glendale, Arizona
85301 for furnishing all supervision technical
personnel, labor materials, equipment,
tools transportation services, licenses, taxes,
and permits required to perform and complete
specified rehabilitation of a single family home
located at 10607 N. 73rd Drive, Peoria, AZ.
Since federal funds are utilized in this work,
Davis-Bacon regulations do apply. Should bidder
find discrepancies or omissions in the plans
and specifications, or should he/she be in doubt
as to their meaning, he/she must notify
CSA/Los Vecinos before the date of the bid
opening. After an evaluation of all requests,
CSA/Los Vecinos may issue written instructions
in the form of an Addendum to the bid
package. There will be a pre-bid/site visit meet-
ing on April 22, 2008 at 9:00 A.M. at the job
site located at 10607 N. 73rd Drive, Peoria, Arizona.
Attendance is mandatory at the pre-bid
site visit. Any contractor submitting a bid, who
has not inspected the property with CSA/Los
Vecinos staff will have his/her bid returned
unopened. All contractors submitting a bid
MUST have completed application for program
participation on file at CSA/Los Vecinos office
no later than May 2, 2008, in order to partici-
pate in this and any other bid. If you have sub-
mitted an application in the past, you do not
need to complete another application. Any con-
tractor submitting a bid without an application
on file will have his/her bid returned unopened.
A performance bond will be required on this
project. Bid package, Plans and Specifications
and applications for participants may be
obtained by contacting Chuck Rogers at (623)
435-2255 beginning April 20, 2008. All
required bid documents should be completed,
signed and submitted with a bid. General Con-
tractors shall hold their bids for a period of 90
days. Minority Businesses Enterprises (MBE)
and Women Owned Enterprises (WBE) and
Disadvantaged Business Entities (DBE) are
strongly encouraged to bid.

ALL BIDS MUST BE SUBMITTED ON THE
CSA/Los Vecinos BID PROPOSAL FORMS.
BIDS ARE SUBMITTED IN ANY OTHER
FORM WILL NOT BE READ OR ACCEPTED.
Bids shall be submitted in sealed company
envelopes clearly marked BIDS FOR THE
REHABILITATION OF 10607 N. 73rd Drive.
BIDS OPENED AT 9:00 A.M. May 2, 2008

CSA/Los Vecinos
6704 N. 59th Avenue
Glendale, AZ 85301
ATTENTION: CSA/Los Vecinos
At its sole discretion, CSA/Los Vecinos
reserves the right to accept or reject any or all
bids or parts thereof. Final award will be given
based on most responsive price and other con-
siderations.

Publish Peoria Times
April 18, 2008



NOTICE

**PUBLIC NOTICE OF THE HEARING IN
THE MATTER OF THE APPLICATION
OF THE CITY OF PEORIA TO
UPGRADE AN EXISTING CROSSING OF
THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY AT 81st AVENUE,
IN THE CITY OF PEORIA,
MARICOPA COUNTY, ARIZONA.
AT AAR/DOT NO. 025-405-Y
DOCKET NO. RR-026358-08-0169**

On March 21, 2008, the City of Peoria ("City")
filed with the Arizona Corporation Commission
("Commission") an application for approval for
the Burlington Northern and Santa Fe Railway
Company ("Railroad") to upgrade an existing
crossing at the Railroad's tracks at 81st Avenue,
in Peoria, Arizona, at AAR/DOT No. 025-405-Y.
The application is available for inspection dur-
ing regular business hours at the offices of the
Commission in Phoenix, at 1200 West Wash-
ington Street, Phoenix, Arizona, and on the
internet via the Commission website
(www.azcc.gov) using the e-docket function.
The Commission will hold a hearing on the
matter commencing on May 21, 2008, at 9:30
a.m., at the Commission's offices, 1200 West
Washington Street, Phoenix, Arizona. Public
comments will be taken on the first day of the
hearing.

The law provides for an open public hearing at
which, under appropriate circumstances, inter-
ested parties may intervene. Intervention shall
be permitted to any person entitled by law to
intervene and having a direct and substantial
interest in the matter. Persons desiring to in-
tervene must file a written motion to intervene
with the Commission, which motion should be
sent to Applicant or its counsel and to all parties
of record, and which, at the minimum, shall
contain the following:

1. The name, address, and telephone number of
the proposed intervenor and of any party upon
whom service of documents is to be made if
different than the intervenor.
2. A short statement of the proposed interven-
or's interest in the proceeding (e.g., a customer
of Railroad, a neighboring property owner, a
crossing user, etc.).
3. A statement certifying that a copy of the
motion to intervene has been mailed to the
Applicant or its counsel and to all parties of
record in the case.

The granting of motions to intervene shall be
governed by A.A.C. R14-3-105, except that all
motions to intervene must be filed on or before
May 9, 2008. The granting of intervention,
among other things, entitles a party to present
sworn evidence at hearing and to cross-examine
other witnesses. However, failure to intervene
will not preclude any customer from appearing
at the hearing and making a statement on such
customer's own behalf.

If you have any questions about this applica-
tion, you may contact the applicant at
(623)773-7951. If you wish to file written com-
ments on the application or want further infor-
mation on intervention, you may write the Con-
sumer Services Section of the Commission at
1200 West Washington Street, Phoenix, Ari-
zona 85007 or call 1-800-222-7000 or appear at
the hearing and make comment.

The Commission does not discriminate on the
basis of disability in admission to its public
meetings. Persons with a disability may
request a reasonable accommodation such as a
sign language interpreter, as well as request this
document in an alternative format, by contact-
ing Linda Hogan, ADA Coordinator, voice
phone number (602)542-3931. E-mail
lhogan@azcc.gov. Requests should be made as
early as possible to allow time to arrange the
accommodation.

Publish Peoria Times
April 18, 2008

Peoria

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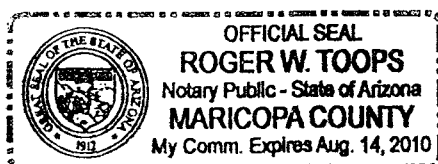
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FUTURE COTTON CROSSING EXTENSION

PROJECT SITE

GRAND AVE

PLANNED DEVELOPMENT (PEORIA PLACE)

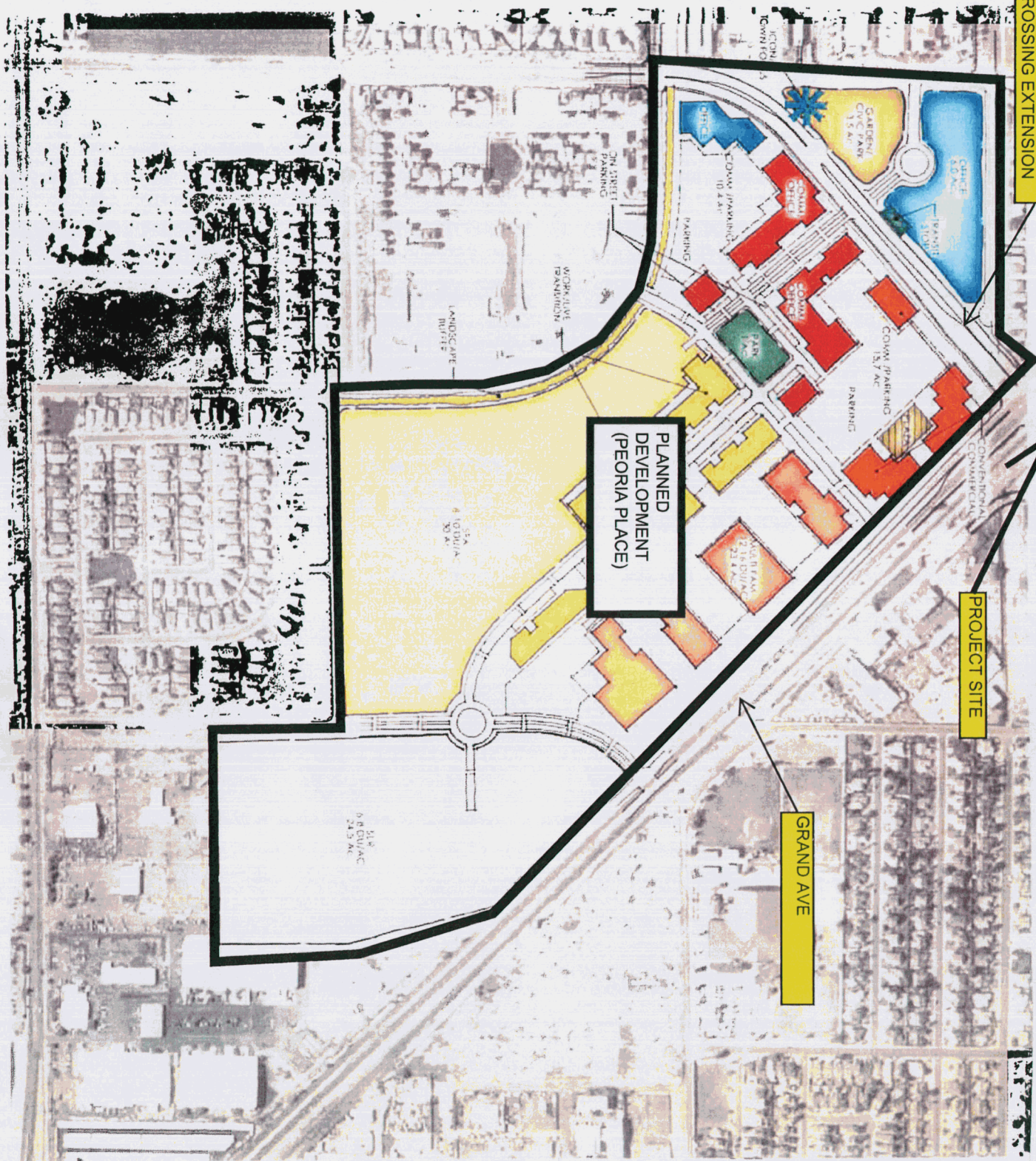
CITY OF PEORIA
HEARING EXHIBIT A-4

EXHIBIT
A-4
ADMITTED

PEORIA PLACE

CONCEPTUAL SITE PLAN D

CITY OF PEORIA
HEARING EXHIBIT A-4



COMMISSIONERS
MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

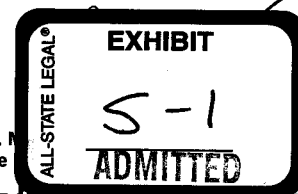
LEGAL



ARIZONA CORPORATION COMMISSION

BRIAN C. N
Executive

DAVID RABER
Director, Safety Division



2008 MAY -1 P 4: 24

AZ CORP COMMISSION
DOCKET CONTROL

Staff Memorandum

To: THE COMMISSION

DOCKET NO. RR-02635B-08-0169

From: Safety Division

Date: May 2, 2008

RE: IN THE MATTER OF THE APPLICATION OF THE CITY OF PEORIA TO
UPGRADE AN EXISTING CROSSING OF THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY AT 81ST AVENUE IN THE CITY OF PEORIA,
MARICOPA COUNTY, ARIZONA, AT AAR/DOT NO. 025-405-Y.

Background

On March 21, 2008, the City of Peoria ("City") filed with the Arizona Corporation Commission ("Commission") an application for approval for the Burlington Northern Santa Fe Railroad ("Railroad") to upgrade an existing crossing at the Railroad's tracks at 81st Avenue, in the City of Peoria, Maricopa County, Arizona at AAR/DOT No. 025-405-Y. Commission Safety Division Staff ("Staff") issued data requests and those data requests and the City's responses (without attachments), are included as attachments to this memorandum.

The City's filing in this application requests approval for the Railroad to upgrade an existing crossing of the Burlington Northern Santa Fe Railroad where 81st Avenue intersects with the railroad tracks. The City is the road authority for 81st Avenue. Flashing lights, bells and automatic gates were first put into service at this location by Commission Decision No. 49754 on 3/13/1979.

The following is a break down of the crossing in this application, including information about the crossing that was provided to Staff by the City and the Railroad.

Geographical Information

This railroad crossing is located at 81st Avenue just east of US-60 (Grand Avenue) in Peoria, Arizona (estimated population of 151,541 as of July 1, 2007). 81st Avenue runs on a north-south trajectory with the rail line traversing 81st Avenue on a north-west angle. Once 81st Avenue crosses the tracks and Grand

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www.azcc.gov

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Avenue, it terminates and becomes westbound Monroe Street. For a map of the area, see Appendix A of this staff report.

81st Avenue

The City is proposing to upgrade the intersection of 81st Avenue and Grand Avenue (US60) by widening 81st Avenue to accommodate two through lanes in each direction, a left turn lane in each direction and one right turn lane in each direction. Currently, 81st Avenue is a two lane road with no dedicated turn lanes. The railroad will install new 12 inch LED flashing lights, and automatic gates in the median, as well as a new concrete crossing surface. This will replace the existing incandescent flashing lights and gate mechanisms as well as the timber crossing surface. Additionally, there will be cantilevers with 12 inch LED flashing lights installed for both directions of traffic. Constant warning time circuitry will also be installed as part of this crossing improvement project. The proposed measures are consistent with safety measures employed at similar at-grade crossings in the state.

Traffic data for 81st Avenue was provided by the City and was taken in 2006. The ADT counts show 2,360 vpd. The projected ADT for 2030 is 52,000 vpd. The Level of Service (LOS) indicates a LOS B for the existing roadway.

Note: The American Association of State Highway and Transportation Officials (AASHTO) Geometric Design of Highways and Streets, 2004, states that the Level of Service characterizes the operating conditions on a facility in terms of traffic performance measures related to speed and travel time, freedom to maneuver, traffic interruptions, and comfort and convenience. This is a measure of roadway congestion ranging from LOS A--least congested--to LOS F--most congested. LOS is one of the most common terms used to describe how "good" or how "bad" traffic is projected to be.

The posted speed limit on 81st Avenue is 35 MPH. Commission Rail Safety Section, as well as Federal Railroad Administration ("FRA") accident/incident records indicate one accident on 81st Avenue, with no injuries, and no fatalities. The accident occurred on 1/7/1979.

Regarding alternative routes from this crossing, to the west is 83rd Avenue approximately .30 miles, and 75th/Olive Avenue to the east approximately 1.06 miles from this crossing. 75th Avenue is an at grade crossing, however Olive Avenue is grade separated.

The estimated cost of the crossing is approximately \$2.1 million (\$1.8 million of railroad improvements and \$300K roadway improvements). This does not include costs for the Grand Avenue improvements leading up to the railroad

crossing or City utility pipeline crossings under the railroad. The City and a private developer are sharing the cost of the crossing improvements.

Train Data

Data provided by the railroad regarding train movements through this crossing are as follows:

Train Count: Average of 13 trains per day

Train Speed: 25 mph

Thru Freight/Switching Moves: There are thru train movements as well as switching movements at this crossing.

Schools and Bus Routes

Information about schools, and school buses, in the area was provided by the City. There are four schools near the 81st Avenue crossing:

- ✓ Santa Fe Elementary, 9880 N. 77th Ave
- ✓ Peoria High School, 11200 83rd Ave
- ✓ Alta Loma Elementary, 9750 N. 87th Ave
- ✓ Academic Private Charter School, 7785 W. Peoria Ave

Currently no school buses cross this intersection. However, it is likely that in the future, once the crossing is fully improved; there could be up to 39 school buses per day utilizing the crossing. Staff are unable to determine exact routes at this time due to driver preferences and destinations.

Hazardous Materials

Staff asked the City if they knew of any hazardous material traffic across these crossings, and this was their answer:

The roadway is not a designated truck route and therefore the number of anticipated vehicles carrying hazardous materials utilizing the crossing per day would be little to none. Grand Ave (U.S. 60) is the designated truck route in the area.

Hospitals

There are no hospitals within the immediate vicinity of this project. The nearest hospital is approximately 5 miles away. The City has a fire station located approximately 1,000 feet north of this crossing. There would likely be the need for emergency fire service vehicles to utilize this crossing on occasion. There are also two other alternative routes (railroad crossings) for emergency vehicles

currently available within a half mile of this intersection depending on destination.

Zoning

The City gave the following response as to how the surrounding areas from this crossing are zoned:

Generally the area is zoned as follows:

CCM - Core Commercial Mixed Use

CRM - Core Residential Mixed Use

PAD - Office, Mixed Use, Single Family, and Multi-Family

PAD - Commercial, Public Facility (Fire Station), Open Park Space

I-1 - Industrial

Spur Lines

No spur lines have been removed within the last three years inside a 10 mile radius of the crossing covered in this application.

Grade Separation

With regard to grade separating 81st Avenue, the City gave the following response:

There were several traffic studies completed for this project over the past 8 years; however grade separation were not specifically included in them as they were never a part of our General Plan. A significant reason the City could not grade separate now is the City is legally committed by Development Agreement with two separate private Developers (Wal-Mart & Peoria Place) which include planning, design, and/or construction commitments for an at grade crossing condition and not grade separated. (See attached Exhibits D & J showing planned and constructed developments). Construction of a grade separation would also severely impact the recently constructed Wal-Mart Super center (2007) site access, parking, and building footprint as well as deliveries to their unloading dock.

In addition, substantial land purchases would be required as well the potential purchase of four separate residential properties and one transmission repair business. Impacts would include relocation costs for each of the property owners.

We feel a grade separation for this crossing would be a huge financial burden to the City with all of the land acquisition needed, legal commitments which are subject to breach of contract, and cost of reconstruction of existing improvements. Furthermore, access to Grand Ave for Cotton crossing would be severed by grade separation without additional construction of connection ramps requiring significantly more land to purchase. As a result, the lack of connectivity to Grand Ave caused by a grade separation would negatively impact any regional

traffic benefits that both roadways (Grand Ave & Cotton Crossing) provide currently to this region.

FHWA GUIDELINES

The Federal Highway Administration (FHWA) Railroad-Highway Grade Crossing Handbook (Revised Second Edition August 2007) provides nine criteria for determining whether highway-rail crossings should be considered for grade separation or otherwise eliminated across the railroad right of way. The Crossing Handbook indicates that grade separation or crossing elimination should be considered whenever one or more of the nine conditions are met. The nine criteria are applied to this crossing application as follows:

FHWA - GRADE SEPARATION GUIDELINES		
Highway-rail grade crossings should be considered for grade separation or otherwise eliminated across the railroad right of way whenever one or more of the following conditions exist:		
		81st Ave.
The highway is a part of the designated Interstate Highway System	Crossing Currently meets the criteria	NO
	Crossing meets the criteria by 2030	NO
The highway is otherwise designed to have full controlled access	Crossing Currently meets the criteria	NO
	Crossing meets the criteria by 2030	NO
The posted highway speed equals or exceeds 70 mph	Crossing Currently meets the criteria	NO
	Crossing meets the criteria by 2030	NO
AADT exceeds 100,000 in urban areas or 50,000 in rural areas	Crossing Currently meets the criteria	NO
	Crossing meets the criteria by 2030	NO
Maximum authorized train speed exceeds 110 mph	Crossing Currently meets the criteria	NO
	Crossing meets the criteria by 2030	NO
An average of 150 or more trains per day or 300 million gross tons/year	Crossing Currently meets the criteria	NO
	Crossing meets the criteria by 2030	NO
Crossing exposure (trains/day x AADT) exceeds 1M in urban or 250k in rural; or passenger train crossing exposure exceeds 800k in urban or 200k in rural	Crossing Currently meets the criteria	NO
	Crossing meets the criteria by 2030	NO

Expected accident frequency for active devices with gates, as calculated by the US DOT Accident Prediction Formula including five-year accident history, exceeds 0.5	Crossing Currently meets the criteria ¹	NO
	Crossing meets the criteria by 2030	Unknown
Vehicle delay exceeds 40 vehicle hours per day	Crossing Currently meets the criteria	NO
	Crossing meets the criteria by 2030	NO

¹ The Accident Prediction Formula predicts the accident frequency for this crossing to be 0.01332.

Crossing Closures

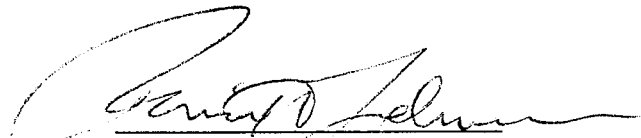
Given the amount of growth in the area, and the projected future ADT, staff would not recommend a closure of 81st Avenue at this time.

Staff Conclusions

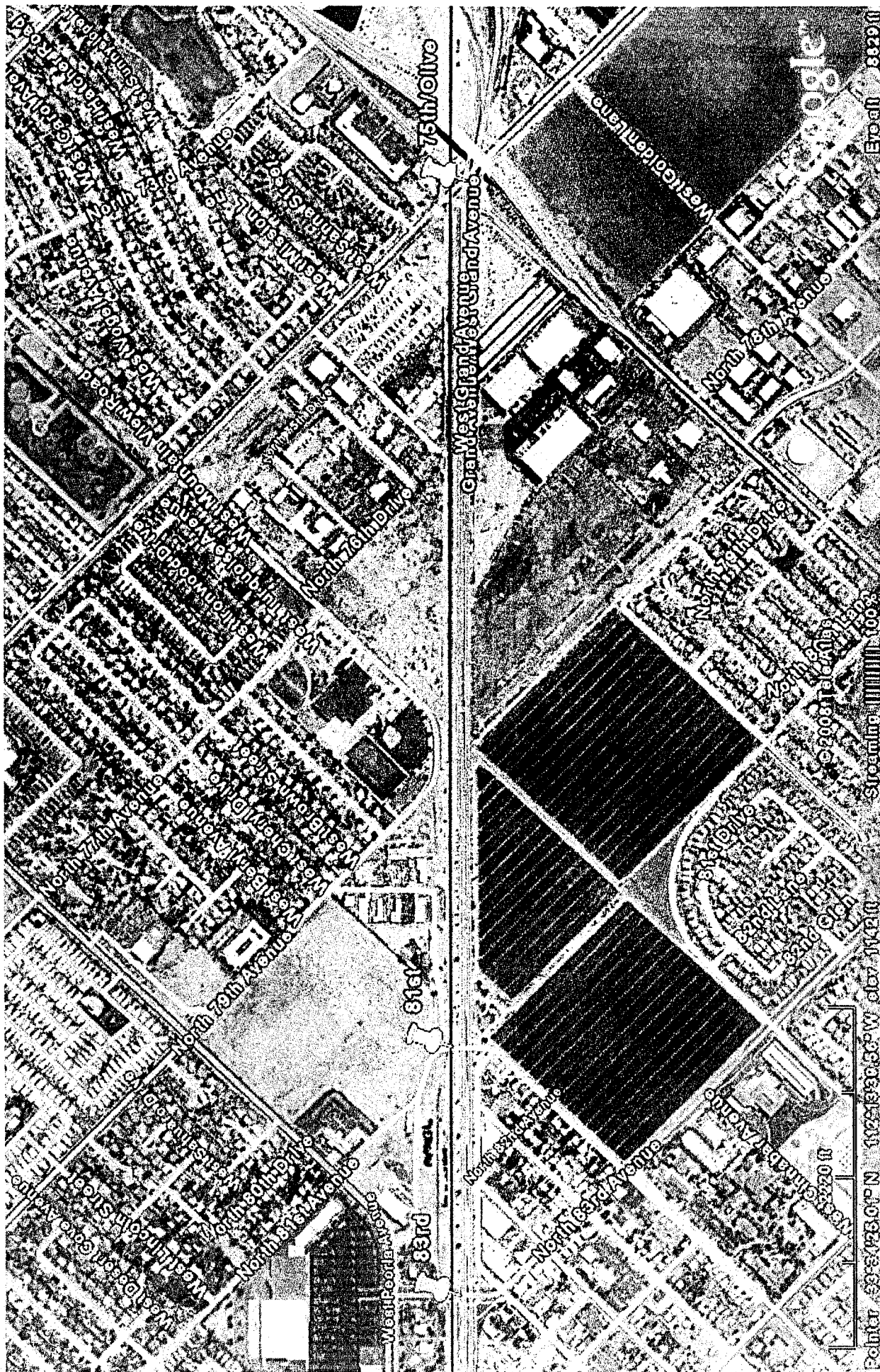
Having reviewed all applicable data, Staff supports the City's application. Staff believes that the upgrades are in the public interest and are reasonable. Therefore, Staff recommends approval of this application.



Dave Raber
Director
Safety Division



Brian H. Lehman
Railroad Supervisor
Safety Division



COMMISSIONERS
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WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE



ARIZONA CORPORATION COMMISSION

BRIAN C. McNEIL
Executive Director

MAR 28 2008

AZ CORP COMM
Director Utilities

March 27, 2008

Richard Costa
Associate Engineer
Capital Engineering Division
8401 West Monroe Street
Peoria, Arizona 85345

Sent via U.S. Mail & Facsimile to:
(623) 773-7211

Re: Staff's **First** Set of Data Requests to The Burlington Northern & Santa Fe Railway Company
Docket No. RR-02635B-08-0169

Dear Mr. Costa:

Please treat this as Staff's **First** Set of Data Requests to The Burlington Northern & Santa Fe Railway Company in the above matter.

For purposes of this data request set, the words "BNSF," "Company," "you," and "your" refer to The Burlington Northern & Santa Fe Railway Company and any representative, including every person and/or entity acting with, under the control of, or on behalf of The Burlington Northern & Santa Fe Railway Company. For each answer, please identify by name, title, and address each person providing information that forms the basis for the response provided.


These data requests are continuing, and your answers or any documents supplied in response to these data requests should be supplemented with any additional information or documents that come to your attention after you have provided your initial responses.

Please respond within **twenty-one (21)** calendar days of your receipt of the copy of this letter. However, if you require additional time, please let us know.

*Please provide one hard copy as well as **searchable** PDF, DOC or EXCEL files (via email or electronic media) of the requested data directly to each of the following addressees via overnight delivery services to:*

- (1) Chris Watson, Railroad Safety, Arizona Corporation Commission, 2200 North Central Avenue, Suite 300, Phoenix, Arizona 85004.
- (2) Charles H. Hains, Attorney, Arizona Corporation Commission, 1200 West Washington Street, Phoenix, Arizona 85007.

Sincerely,


Charles H. Hains
Attorney, Legal Division
(602) 542-3402

CHH:sab
Enclosure
cc: Chris Watson

**ARIZONA CORPORATION COMMISSION
STAFF'S FIRST SET OF DATA REQUESTS TO
THE BURLINGTON NORTHERN & SANTA FE RAILWAY COMPANY
DOCKET NO. RR-02635B-08-0169
MARCH 27, 2008**

Subject: All information responses should ONLY be provided in searchable PDF, DOC or EXCEL files via email or electronic media.

- CW 1.1 Provide Average Daily Traffic Counts for each of the three locations.
- CW 1.2 Please describe the current Level of Service (LOS) at each intersection.
- CW 1.3 Provide any traffic studies done by the road authorities for each area.
- CW 1.4 Provide distances in miles to the next public crossing on either side of the proposed project location. Are any of these grade separations?
- CW 1.5 How and why was grade separation not decided on at this time? Please provide any studies that were done to support these answers.
- CW 1.6 If this crossing was grade separated, provide a cost estimate of the project.
- CW 1.7 Please describe what the surrounding areas are zoned for near this intersection. i.e. Are there going to be new housing developments, industrial parks etc.
- CW 1.8 Please supply the following: number of daily train movements through the crossing, speed of the trains, and the type of movements being made (i.e. thru freight or switching). Is this a passenger train route?
- CW 1.9 Please provide the names and locations of all schools (elementary, junior high and high school) within the area of the crossing.
- CW 1.10 Please provide school bus route information concerning the crossing, including the number of times a day a school bus crosses this crossing.
- CW 1.11 Please provide information about any hospitals in the area and whether the crossing is used extensively by emergency service vehicles.
- CW 1.12 Please provide total cost of improvements to each crossing.
- CW 1.13 Provide any information as to whether vehicles carrying hazardous materials utilize this crossing and the number of times a day they might cross it.
- CW 1.14 Please provide the posted vehicular speed limit for the roadway.
- CW 1.15 Do any buses (other than school buses) utilize the crossing, and how many times a day do they cross the crossing.

**ARIZONA CORPORATION COMMISSION
STAFF'S FIRST SET OF DATA REQUESTS TO
THE BURLINGTON NORTHERN & SANTA FE RAILWAY COMPANY
DOCKET NO. RR-02635B-08-0169
MARCH 27, 2008**

Subject: All information responses should ONLY be provided in searchable PDF, DOC or EXCEL files via email or electronic media.

CW 1.16 Please fill in the attached FHWA Grade Separation Guidelines Table, (from FHWA's 2007 revised second edition Railroad Highway Grade-Crossing Handbook, page 151) with a yes or no answer as to whether each item applies.

FHWA - GRADE SEPARATION GUIDELINES

Highway-rail grade crossings should be considered for grade separation or otherwise eliminated across the railroad right of way whenever one or more of the following conditions exist:

	Crossing 1	Crossing 2	Crossing 3	Crossing 4	Crossing 5	Crossing 6
The highway is a part of the designated Interstate Highway System	Crossing Currently meets the criteria Crossing meets the criteria by 2030					
The highway is otherwise designed to have full controlled access	Crossing Currently meets the criteria Crossing meets the criteria by 2030					
The posted highway speed equals or exceeds 70 mph	Crossing Currently meets the criteria Crossing meets the criteria by 2030					
AADT exceeds 100,000 in urban areas or 50,000 in rural areas	Crossing Currently meets the criteria Crossing meets the criteria by 2030					
Maximum authorized train speed exceeds 110 mph	Crossing Currently meets the criteria Crossing meets the criteria by 2030					
An average of 150 or more trains per day or 300 million gross tons/year	Crossing Currently meets the criteria Crossing meets the criteria by 2030					
Crossing exposure (trains/day x AADT) exceeds 1M in urban or 250k in rural; or passenger train crossing exposure exceeds 800k in urban or 200k in rural	Crossing Currently meets the criteria Crossing meets the criteria by 2030					
Expected accident frequency for active devices with gates, as calculated by the US DOT Accident Prediction Formula including five-year accident history, exceeds 0.5	Crossing Currently meets the criteria Crossing meets the criteria by 2030					
Vehicle delay exceeds 40 vehicle hours per day	Crossing Currently meets the criteria Crossing meets the criteria by 2030					

City Provided Responses to the Requested Data Items; Cotton Crossing ACC Application:

Item:

CW 1.1 "Provide Average Daily Traffic Counts for these three locations" *We have only one location under application to the ACC. This location currently has approx. 2,360 vehicles per day (Fig 3 & 4, Kimley Horn and Associates, TIA (2006) for existing AM & PM Peak Hour traffic counts. Average daily traffic as a general rule is 10 times the peak hour counts. $((121+115) \times 10) = 2,360$. (See attached Exhibits A-1 & A-2)*

CW 1.2 "Please describe the current Level of Service (LOS) at each intersection. *We have only one location under application to the ACC. The City did not establish an existing level of service LOS for this intersection by traffic study, however based upon the existing traffic volumes (Fig. 4 - Kimley Horn and Associates, TIA (2006, the volumes of traffic at the existing crossing (2,360 estimated ADT above) relative to Grand Ave (16,700, Fig 4), the existing intersection operates at a LOS B or better based upon the judgment of our Traffic Engineering Division. (See attached Exhibit A-2)*

CW 1.3 "Provide any traffic studies done by the road authorities for each area." *See attached including CDs with PDF.*

CW 1.4 "Provide distance in miles to the next public crossing on either side of the proposed project location" *The next nearest crossing is at 83rd Avenue at approx. 0.30 miles west of this crossing and 75th Ave/Olive Ave is approx. 1.06 miles east of this crossing for which 75th Ave is an at grade crossing, however Olive Ave is grade separated.*

CW 1.5 "How and why was grade separation not decided on at this time?" *Please provide any studies that were done to support these answers. There were several traffic studies completed for this project over the past 8 years, however grade separation were not specifically included in them as they were never a part of our General Plan. A significant reason the City could not grade separate now is the City is legally committed by Development Agreement with two separate private Developers (Wal-Mart & Peoria Place) which include planning, design, and/or construction commitments for an at grade crossing condition and not grade separated. (See attached Exhibits D & J showing planned and constructed developments). Construction of a grade separation would also severely impact the recently constructed Wal-Mart Supercenter (2007) site access, parking, and building footprint as well as deliveries to their unloading dock.*

In addition, substantial land purchases would be required as well the potential purchase of four separate residential properties and one transmission repair business. Impacts would include relocation costs for each of the property owners.

We feel a grade separation for this crossing would be a huge financial burden to the City with all of the land acquisition needed, legal commitments which are subject to breach of contract, and cost of reconstruction of existing improvements. Furthermore, access to Grand Ave for Cotton Crossing would be severed by grade separation without additional construction of connection ramps requiring significantly more land to purchase. As a result, the lack of connectivity to Grand Ave caused by a grade separation would negatively impact any regional traffic benefits that both roadways (Grand Ave & Cotton Crossing) provide currently to this region.

CW 1.6 "If this crossing was grade separated, provide a cost estimate of the project." *See attached estimate for grade separation. (Exhibit F).*

CW 1.7 "Please describe the surrounding areas are zoned for near this intersection. i.e. Are there going to be new housing developments, industrial parks, etc.
Generally the area is zoned for as follows:

CCM - Core Commercial Mixed Use
CRM - Core Residential Mixed Use
PAD - Office, Mixed Use, Single Family, and Multi-Family
PAD - Commercial, Public Facility (Fire Station), Open Park Space
I-1 - Industrial
(See attached Exhibit G)

CW 1.8 "Please supply the following: number of daily train movements through the crossing, speed of the trains, and the type of movements being made (i.e. thru freight or switching). Is this a passenger train route? As provided by Megan McIntyre of BNSF Railroad Co. Manager Public Projects by e-mail on May 9th, 2007....." *The average train traffic on this route is 13 freight trains per 24-hour period at a timetable speed of 25 MPH and 0 passenger trains at a timetable speed of 0 MPH.*

CW 1.9 "Please provide the names and locations of all schools (elementary, junior high and high school) within the area of the crossing."

Names & locations of existing schools are as follows (See attached Exhibit H):

*Santa Fe Elementary 9880 N. 77th Ave
Peoria High School, 11200 83rd Ave
Alta Loma Elementary, 9750 N. 87th Ave
Academic Private Charter School, 7785 W. Peoria Ave*

CW 1.10 "Please provide school bus route information concerning the crossing, including the number of times a day a school bus crosses this intersection" *Currently no school buses cross this intersection, however it would be likely that in the future, once the crossing is fully improved that there could be up to 39 school buses per day utilizing the crossing. We are unable to determine exact routes at this time due to driver preferences and destinations.*

C-1.11 "Please provide information about any hospitals in the area and whether the crossing is used extensively by emergency services vehicles." *There are no hospitals within the vicinity of this project. The nearest hospital is approx. 5 miles away. The City of Peoria has a fire station located approx. 1000 feet north of this crossing. Randomly there would be the need for emergency fire service vehicles to cross this crossing. There are also two other alternative routes (railroad crossings) for emergency vehicles currently available within a half mile of this intersection depending on destination.*

C-1.12 "Please provide total cost of improvements to each crossing" *We have only one crossing location under application to the ACC. The estimate cost of the crossing is approx. \$2.1m. (\$1.8m of railroad improvements and \$300K roadway improvements). Does not include costs for Grand Ave improvements leading up to the railroad crossing or City utility pipeline crossings under railroad.*

C-1.13 "Provide any information as to whether vehicles carrying hazardous materials utilize this crossing and the number of times a day they might cross it." *The roadway is not a designated truck route and therefore the number of anticipated vehicles carrying hazardous materials utilizing the crossing per day would be little to none. Grand Ave (U.S. 60) is the designated truck route in the area.*

C-1.14 "Please provide the posted vehicular speed limit for the roadway." *The roadway will be posted at 35 mph before and after the railroad crossing.*

C-1.15 "Do any buses (other than school buses) utilize the crossing, and how many times a day do they cross the crossing." *Currently there are no buses utilizing the existing crossing. All buses (City Transit) utilize the existing Peoria Ave crossing approx. one half mile to the west of this crossing. For the future 83rd Avenue Fixed Route service is not currently part of the Regional Transportation Plan and as such may not be developed further / implemented until regional funding is identified. If funding becomes available it is estimated that approx 36 buses on average could make this crossing per day (18 in each direction).*

C-1.16 "Please fill in the attached FHWA Grade Separation Guidelines Table, (from FHWA's 2007 revised second edition Railroad Highway Grade-Crossing Handbook, page 151) with a yes or no answer as to whether each item applies." (See attached Exhibit I)